BENGAL LEGISLATIVE COUNCIL
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Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

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Vol. XIV—1882.

Published by Authority of the Council.

Calcutta:
PRINTED AT THE BENGAL SECRETARIAT PRESS.

1883.

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PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 21st January 1882.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General.*
The HON'BLE H. L. DAMPIER, C.I.E.,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE D. M. BARBOUR,
The HON'BLE T. T. ALLEN,
The HON'BLE MAHARAJAH LUCHMESSUR SING BAHADOOR OF DURBHANGA,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
and
The HON'BLE AMEER ALI.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

THE HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to amend "The Calcutta Municipal Consolidation Act, 1876." He said this was a very simple measure, and he would have been unwilling to trouble the Council with it, but there was a practical difficulty which could only be removed by legislation, and the Government of India had suggested the amendment of the law. The only object of the Bill was to alter the date of the commencement of the municipal year in Calcutta from the 1st of January to the 1st of April. The Government of India had determined to publish, with the annual statements of revenue and finance, an abstract of the accounts of all the municipalities in British India, and in order to secure uniformity in the preparation of these accounts, it was thought essential that the municipal year of Calcutta should be

the same as the official year, which had been adopted throughout the country. But under the law as it now stood this change could not be effected. The Municipal Act prescribed certain dates on which licenses were to be taken out, and specified certain months in which meetings were to be held for fixing the rates of assessment and preparing the budget: and no power to alter those dates had been reserved either to the Government or to the Municipality: it was therefore necessary to introduce a legislative measure. Of course, when the change had once been made there would be no more difficulty in preparing a budget for the year beginning on the 1st of April than for one beginning on the 1st of January. The only possible inconvenience would be during the year of transition. He had been in communication with the Chairman of the Calcutta Municipality, and they had agreed upon the form of a short Bill which he hoped the Council would accept. He need not at present refer to the details of the Bill, as he was now only asking for leave to introduce it, and if leave was given, he hoped at the next meeting of the Council to introduce the Bill, and before that time it would be printed and in the hands of hon'ble members.

The motion was agreed to.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. DAMPIER moved for leave to introduce a Bill to amend the law relating to embankments and water-courses. He said that, before the year 1873, the liability for the maintenance of embankments throughout Bengal was vague and indefinite. It was acknowledged that there was an obligation somewhere—an obligation towards the agricultural community at large—to afford protection from inundations. But how far that obligation rested upon the Government, and how far it rested on the zemindars individually of the estates which were benefited, was what one of His Honor's predecessors would have called "a fluid" question, the solution of which was to be found exceptionally in the settlement arrangements of certain estates only. Previous legislation had dealt only with the mode of giving effect to the obligation in cases where it was assumed that it rested with one party or the other—with the zemindar, or the Government.

In 1873 Mr. Schalch introduced a Bill into this Council to amend the existing law, and during the passage of that Bill through this Council, it was found that the time had come for defining the liability more precisely. The age of give and take had passed away; the time had passed away when people were ready to accept a paternal Government as an arbitrator to do justice between individuals and the public at large. The passage of that Bill through the Council was delayed for the purpose of making a thorough enquiry into the matter. Settlement engagements were examined, the general custom which had prevailed with regard to particular embankments was looked into, and a definite conclusion arrived at. The Government accepted certain definite liabilities, which were formulated in the Bill and ratified by this Council in the shape of Schedule D, which contained a list of the embankments for the maintenance of which the Government was to be liable in the future. With this part of legislation His Honor's Government

The Hon'ble Mr. Reynolds.

had no intention to interfere. There was a clause in the existing law which enabled the Government to add embankments as occasion might occur to Schedule D, and there was no intention of revising that schedule or of making any alteration in this substantive part of the law.

But, apart from the question of public embankments which had to be maintained at the cost of the public revenues, previous legislation had conferred upon the Government the right and duty of executing, through its officers, the works which were necessary for the maintenance of other embankments, the obligation for which rested on the zemindars. The expense was to be advanced by the Government and to be recovered from the zemindars of the lands benefited and the tenure-holders upon those lands. The Act of 1873 re-enacted, with amendments and improvements, the procedure clauses which empowered the Government to enter upon lands as necessary, and to do all that was required for the maintenance of these public embankments through its own Engineer officers, and it enacted clauses for apportioning the cost of such works among those who were liable to pay them, and for recovering such cost. These were the clauses with which the Bill MR. DAMPIER had now the honour to introduce would deal. In the course of eight years' working, as usual, defects had been discovered and suggestions had come to the surface for improvements to facilitate the working of this portion of the Act.

He would mention briefly the principal changes which it was proposed to introduce. Under the existing law certain powers for altering the course of embankments and removing embankments and starting new works were vested in the Collector. It had been found that the questions involved in the exercise of this power were so important and so often affected large tracts of country around, that it was not safe to leave them in the hands of the Collectors of individual districts. The Board had been obliged to issue instructions prohibiting Collectors from exercising certain of these powers without the previous approval of the Board to the project. A good deal had since been said about the impropriety of the Board—an executive authority—restricting the exercise of a power which the Legislature had conferred on its subordinates, but the fact remained that the Collector now was not allowed to exercise the powers in question without first obtaining their approval, and now the Government had thought it right to go still further, and to require that such projects should before adoption come up for the consideration of the Lieutenant-Governor, who would examine them in the Public Works Department with reference to the whole country which might be affected. The necessity of sending up these projects for the sanction of the Government before they were undertaken was one of the changes which it was proposed to make by this Bill.

Then in the existing law there was a certain section which provided that the land of embankments should be vested in the Government in trust for the public or the zemindar as the case might be. This section was indefinite and led to much difficulty and objection in its working; it was proposed to define that right of the Government more clearly.

Thirdly, as the law now stood, when damage was inflicted upon any person by any work which was done under the Act, compensation was to be made to him, and the Court which awarded compensation was not bound to take into consideration what benefit, if any, that same work had done, although the benefit accrued to the same individual in another part of his property. That defect would now be remedied.

One of the most important of the proposed changes for the benefit of the zemindar particularly was in the apportionment of the expenses. The law now required that the expenses incurred in each year should be separately apportioned over the zemindars and tenure-holders who were liable to pay, and the procedure in that behalf was so elaborate and intricate as to be almost unworkable. It was now proposed that the Government should estimate what the cost would be of maintaining embankments in any given tract, for the expenses of which the zemindars were liable, for a certain number of years as might be fixed in each case; that the amount so estimated should be divided into as many equal parts as there were years, and that a rate should be apportioned over the zemindars once for all—a contract rate in fact. The apportionment would be once for all instead of every year.

The existing law required notices to be served at every step in such number on every petty holder as to be perfectly unworkable. This would be simplified, and the principle adopted in the Road Cess Act would be introduced, which provided that special notices should be served only upon those who had interests above a certain amount. Those whose interest was very small must be satisfied with the general notice, which would be very widely published.

Lastly, there would be a special clause introduced with regard to the apportionment of the expense of maintaining the Gunduk embankment in Mozufferpore. A custom had prevailed there of apportioning the expense according to a method resembling one of the three modes which the Act recognised; but the practice varied somewhat from the prescribed system, and the assessments under it did not come strictly within the four corners of the clauses which empowered the Collector to apportion. He therefore proposed to introduce a section legalizing the customary mode of apportionment in respect of these embankments.

The motion was agreed to.

The Council was adjourned to Saturday, the 28th instant.

The Hon'ble Mr. Dampier.

Saturday, the 28th January 1882.

PRESENT :

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General*,
The HON'BLE H. L. DAMPIER, C.I.E.,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE D. M. BARBOUR,
The HON'BLE T. T. ALLEN,
The HON'BLE MAHARAJA LUCHMESSUR SING, BAHADOOR, OF DURBHUNGA,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The HON'BLE AMEER ALI,
and
The HON'BLE J. E. CAITHNESS.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. DAMPIER moved that the Bill to amend the law relating to embankments and water-courses be read in Council. He said that the Bill had been in the hands of Hon'ble Members for the time required by the rules. Although the Bill had been a good deal recast, he had adhered to the division into Parts which was to be found in the present law (Bengal Act VI of 1873). He would notice the principal changes which this Bill made Part by Part.

The first section which deserved notice was section 2 in Part I. The original intention had been to repeal Act VI of 1873 altogether, and to re-enact all the provisions of the embankment law into one statute *totus, teres, atque rotundus.* But unfortunately there was a practical difficulty. Some of the provisions of the existing Act were such that the Lieutenant-Governor had been advised that, if this Council were to attempt to re-enact them into law, then, according to the stricter construction which was now put on the restrictions which the Indian Councils' Act placed on the powers of this Council, the inclusion of those provisions would imperil the assent of the Governor-General being given to the Bill; he was obliged, therefore, to say in the Bill that Act VI of 1873 was repealed with the exception of the sections set out in the first schedule, and then he was obliged to have a very awkward schedule (II) of references, to explain how the references in the unrepealed parts of Act VI of 1873 should be understood to apply to the corresponding passages in the present Bill about to pass.

In the preliminary part (Part I) he had introduced three sections (4, 5, and 6) which might be said to deal with the general rights of the Government in reference to embankments as distinguished from rights connected with individual works. At the last meeting of the Council he mentioned that section 34 of the existing law, which declared that embankments were vested

in the Government, was vague, and had led to considerable misconstruction. Sections 4 and 5 read together were intended to remove that vagueness. Section 4 of the Bill reproduced section 34, which provided that embankments—meaning thereby the mound itself and its bermes proper—should vest in the Government itself. But then there remained the question of those plots of land adjacent to the bermes from which the Engineer had been in the habit of taking earth and other materials for the repair of the embankment. Under the existing law, surveys had been made of the lands which vested in the Government under section 34, and in carrying out that survey, the local officers had included these adjacent lands. Of course the proprietors immediately raised the question. They said "you have used these lands to take earth from, but they are not part of the embankment in the sense of section 34, and that section does not vest them in the Government." Section 5 of the Bill had been framed to meet this reasonable objection. It was to the effect that lands which had been customarily used for taking earth and other materials for the repair of public embankments should be at the disposal of the Government for that purpose only; that compensation should only be paid in respect of all other damage done to property on such land, but not in respect of earth and other materials taken from it; and then it was provided elsewhere that if the proprietor thought that such land was permanently injured, he might require that the Government should acquire the land under the Land Acquisition Act.

Section 6 was also a new section, and was rather an intricate matter to explain. It had to be read with section 18 and section 74, and was intended to meet a want which had been felt in administration. The existing law on the subject was embodied in section 53 of Act VI of 1873, which ran thus—

"Every person who, without the previous permission of the Engineer, shall erect, or cause or wilfully permit to be erected, any new embankment, or shall obstruct, or divert, or cause or wilfully permit to be obstructed or diverted, any water-course, if such embankment or water-course is likely to interfere with, counteract, or impede any public embankment or any public water-course, or shall abet any such act, shall be liable on conviction to a fine not exceeding five hundred rupees, or, in default of payment, to imprisonment of either description for a period not exceeding six months."

Under the law as it stood, any person might, acting on his own judgment and at his own peril, construct an embankment, or divert water-courses, and so on, if he thought that his work would not interfere with, counteract, or impede any public embankment, or any public water-course. But it was often a very difficult matter, requiring the knowledge of professional experts, to judge whether the new work did or did not so interfere, &c. As the law stood at present, when the Engineers found out that any such objectionable new work had been executed (and this they had to detect for themselves), if the Collector wished to enforce the penalty of the section, he was obliged to prove to the satisfaction of the non-professional officer who presided in the Court that the work done was such as "to interfere with, counteract, or impede any public embankment or public water-course." To prove this judicially was no easy matter; however obvious the thing might be to experts who understood the subject and the local circumstances, the attempt to prove it judicially was

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just as likely to break down as not. Under section 4, clause (2) of the existing law the Collector had the power to remove an embankment if he considered it an obstruction and that it interfered with the drainage of the country, but if he failed to get a conviction under the penal clauses of the Act on the ground that it so interfered, then the party who put up the embankment would under section 30 be able to claim compensation for the removal. This made it extremely difficult to work. The Lieutenant-Governor had therefore found it necessary to ask the Legislature for power, in some parts of the country where circumstances required it, absolutely to prohibit the construction of such works without leave previously obtained from the authorities. But this was not absolutely necessary in all parts of the country; and the provisions of the Bill had been devised to meet this state of things. Section 6 provided that the Lieutenant-Governor might notify certain tracts within which the works should not be done by individuals without obtaining previous permission, and the mere fact of so violating this prohibition had by a subsequent section of the Bill been made penal. But, as MR. DAMPIER had said, it was not necessary to extend this somewhat strict clause to the whole country, and therefore as regards all the country which was not notified as included in tracts to which the prohibition should apply, the law would remain as it had been hitherto.

Passing on to Part II, relating to the powers of the Collector and the procedure thereon, section 7 was very important and took the place of the old section 4. It defined the powers to be exercised by the Collector—by the Collector not as an individual officer, but as the representative of the Government, acting in its Revenue Department. That should be thoroughly understood, because a good deal of discussion had been raised on this point. Under the existing law, the Collector had a good many of these powers, and when it became necessary for his revenue superiors to restrict him in the exercise of those powers, it had been urged that as the law vested them in the Collector it was unconstitutional of the superior revenue authorities to restrict the exercise of them by each Collector according to his own discretion. MR. DAMPIER himself thoroughly disagreed in such a view. His own belief was that whenever (in connection with the performance of executive as contra-distinguished from judicial functions) the law said that the Collector or the Magistrate, or any other specified officer, might do so and so, it meant (unless the contrary was expressed or implied by the context) that he might do so "if his executive superiors would let him." However, section 7 as drafted met the objection; its purport was that those works, regarding which it had been found by experience that a larger view should be taken than that which the Collector or Engineer of an individual district might take, should be initiated by the Collector, but should not be finally undertaken without the sanction of the Lieutenant-Governor, who would consider the proposal in the Public Works Department, with reference to the whole aspect of the question. Of course the Lieutenant-Governor was to be got at through the usual channel of the Commissioner of the Division, and so on.

Regarding Part III, procedure in the case of danger to life and property, what was called the "emergent procedure," he had no remarks to make, because it was a reproduction of portions of Part III of the existing Act. There was no alteration which was of sufficient importance to bring to the notice of the Council.

Part V, which was imperfectly headed "acquisition of land," but which ought to have been headed "acquisition of land and compensation," had been the subject of much discussion; but the only alteration which had as yet been embodied in the Bill was the 4th clause which had been added to section 38. As the law stood, in awarding compensation for damage done, there was no provision made that any benefit which the party claiming compensation had derived from the same work, in another part of his estate perhaps, should be set off against his claim to compensation for damage done to him elsewhere.

MR. DAMPIER had therefore simply re-enacted from Act XXXII of 1855 that the Judge and the assessors should take into consideration, in settling the amount of compensation, whether any party to the suit had derived benefit from the work in respect of which compensation was claimed, and should set off the estimated value of such benefit against the compensation which would otherwise be decreed to such party. That was the only material alteration as yet in the Bill. But his hon'ble and learned friend the Advocate-General had brought to his notice a correspondence which would make it necessary to introduce certain words into this Part of the Bill to clear up certain doubts which still existed therein, and to which he would call the attention of the Select Committee in due course.

Then, Part VI related to the cost of works, proceedings, &c., and in connection with this Part MR. DAMPIER would notice a difficulty which he had mentioned at the last meeting of the Council as regards the service of notices which were required by the Act at every turn. And here he would read to the Council what Mr. H. L. Harrison said in his Manual on Embankments in a note to section 38 of the Act—

"It has been already remarked that the weak point in the Act is the system of serving notices in the most wholesale manner at every stage of the proceedings. Take an ordinary case of the repairs to a line of embankments some 20 miles in length, which would probably protect some 200 square miles of country which might well contain 250 estates and 500 villages. The cost of repairs would, perhaps, be Rs. 4,000 in any given year. Notice of the receipt of estimates would have to be served on the 250 estates by putting up a copy at the mal cutcherries of such as had them, and where no such cutcherry exists by fixing them up in a conspicuous place, and by delivering a copy to the agent who paid the last, or shall pay the next, instalment of revenue, if the revenue be over Rs. 100 per annum. Next, on the receipt of the accounts, the same process has to be gone through for the 250 estates and the 500 villages, and to crown all, when the amount to be apportioned has been fixed, similar notices have to be served, containing the list of names, that is 750 notices, each containing 750 names. Lastly, when apportioned, further notices have to be served on estates (section 49). Thus in the case concerned 2,500 notices would be served from first to last, to levy Rs. 4,000, even if levied once for all; and it can hardly be maintained that it is practicable to go through this procedure month after month. The alteration which is needed is to make the service of separate notices only necessary for large estates where payments would be heavy, say estates paying above Rs. 100 revenue as in the case of the Road Cess Act."

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That was the principle which had been adopted in the Bill. Notices were divided by sections 78 and 79 of the Bill into general and special in respect of each project of work, of each set of estimates, of each set of accounts, and of each apportionment of expenses; general notices would be widely published as provided in section 78, but special notices would only be served in respect of the larger interests affected; the amounts to be paid in respect of some estates and tenures were so small that the service of special notices would cost more than the amounts for which they were served. MR. DAMPIER thought this change would commend itself to the Council.

Section 57 recognized the mode of apportionment which had hitherto been in force in the Gunduck embankment in the Mozufferpore district. It was found that the expenses hitherto incurred for the maintenance of these embankments had been apportioned on a system which affected to be one of the three modes of apportionment recognized by the Act. But it was not exactly in accordance with any of those systems, and the procedure which had been adopted was not covered by the section in the existing law. The object of the clauses which had been inserted in the Bill was to legalize what had been done, and also to legalize the system which had now become the custom in respect of these embankments as regards the apportionment of all expenses to be incurred in the future.

Sections 62 to 67 contained, perhaps, the most important part of the Bill. Hon'ble Members who had read the correspondence which had been circulated as annexures to the Bill were aware of the difficulty which attended the apportionment year by year of the expenses actually incurred, and there was another objection to the existing system. When an embankment was first taken in hand by the Government, there was usually a very large initial expenditure to get them into proper form. The expenditure of the first two years was extremely heavy, and the payment of it was an intolerable burden on the Zemindars concerned; but after the embankment was got into order the mere expense of maintaining it and of repairs was trifling in comparison. It was proposed to get over the difficulty and trouble to all concerned by introducing what might be called the contract system. The Lieutenant-Governor would decide what was likely to be expended in the maintenance of an embankment in any number of future years which he might think proper to take as the period included in his order. Then, the total of such amount would be the amount payable by those who were liable for the expenses during that period, and that total amount would be divided into as many equal parts as there were years within that period. The limit which was imposed by a certain section of the present Act was retained, but the amount payable in any one year would not be more than one rupee an acre, on the area benefited or protected.

It was obvious that any means by which all the annual repetition of the flood of notices and trouble of apportionment could be got over would be an enormous relief to those who were concerned. Before the contract was finally entered into the parties interested would have every opportunity of submitting their objections, which would be fully considered.

Section 69 was a reproduction of the existing law which provided that the amounts due to the Government under the Act should be recovered as arrears under the provisions of the Public Demands' Recovery Act. MR. DAMPIER was personally answerable for the introduction of sections 70 and 71. Under the existing law the only mode of recovering arrears was under the provisions of the Public Demands' Recovery Act, under which the property and person of the individual only, who was liable for the payment at the time of apportionment, could be followed. Suppose that before the amount was levied the proprietor sold his estate and became insolvent. Was the Government, which had advanced the money, to lose the sum which it had advanced? Certainly not. The money had been expended for the benefit of the estate, and it was only reasonable that payment of the amount should be secured on the land. The principle of sections 70 and 71 was not new; it had been accepted by the Council in the Drainage Act which it passed last year. If the Collector could not recover from the individual, or under any circumstances, if he thought proper, he would be empowered to recover the sum advanced from the land in one of the modes specified in section 71.

Sections 82 to 84 related to appeals and the power of revision and control. The essence of them was that certain orders should be appealable as of right, but in all matters the superior controlling authorities should have the power of controlling and of revising the orders passed by their subordinates.

Section 88 was new, and it provided that the Lieutenant-Governor might make certain rules. It was taken from the Bengal Irrigation Act, III of 1876. It was found a very useful provision, as under it almost anything which was overlooked in the Act in respect to machinery might be supplemented by means of rules passed by the Lieutenant-Governor.

Then section 89 saved the operation of certain Acts; it provided that the Act should not apply to any embankment, land, or water-course which was under the operation of the Drainage Act, the Irrigation Act, or the Canal Tolls Act.

The HON'BLE KRISTODAS PAL said he generally accepted the reasons which had induced the hon'ble mover to introduce this Bill. He entirely agreed with him that the eight years' working of the Act had certainly disclosed defects which ought to be remedied. He was glad to observe that the hon'ble member did not interfere with the substantive part of the law. The Bill was, strictly speaking, to be a Bill of details, which would be better dealt with in Committee. But there was one important question of principle which BABOO KRISTODAS PAL wished to bring to the notice of the hon'ble Council. Under the existing Act, and under the Bill as it had been framed by the hon'ble mover, the Collector would be the responsible officer to supervise the operations of the Engineer, subject of course to the control of the Commissioner, the Board of Revenue, and the Government of Bengal in the Public Works Department. The Collector, as the hon'ble mover observed, would be the representative of the Revenue Department of the Government, but BABOO KRISTODAS PAL found that a very experienced Collector had himself stated that he was not in a position to exercise any control over the Engineer. He held in his hand a

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copy of the report of a Committee appointed by His Honor's Government in 1879, which was signed by Mr. Dampier, Mr. Harrison, and Colonel Haig, and in which it was stated that Mr. Harrison strongly contended that "it is quite impossible for the Collector to exercise any control over the *details* of repair estimates, and that any rule the tendency of which is to make him responsible for them is inequitable, and must practically be a dead-letter." BABOO KRISTODAS PAL thought it would conduce greatly to the relief of the Collector if a committee was associated with him in superintending the operation of the Act. The Embankment Act, he submitted, was analogous in principle to the Road Cess Act and the Drainage Act, and under the last two Acts committees were associated with the Collector for the administration of those Acts. There were many questions arising out of the Act in the settlement of which the Collector might derive material assistance if persons interested in embankments were associated with him as a committee to give him information and advice. He did not mean that the power and control of the Government over the operations of the Collector should in any way be diminished; all that he meant was that, if persons interested in embankments, and who were required to pay for their maintenance, were formed into a committee and associated with the Collector in the administration of the law, it would be satisfactory to the people and conducive to the efficient working of the law. What particular powers should be assigned to the committee would be a matter for the consideration of the Select Committee, if the Council accepted the suggestion which he had taken the liberty to make. But he did think that the time had now arrived when those who were called upon to pay for the maintenance of embankments should have a voice in the expenditure of the money contributed by them. The hon'ble mover of the Bill in moving at the last meeting of the Council for leave to introduce the Bill said that "the age of give and take had passed away; the time had passed away when the people were ready to accept a paternal Government as an arbitrator to do justice between individuals and the public at large." If Bengal had passed the patriarchal epoch, BABOO KRISTODAS PAL thought that the time had arrived to give those who were interested in the maintenance of embankments a voice in their own affairs. This was now also the policy of the Government, and it would be quite in consonance with that policy to give those who contributed towards the maintenance of embankments a voice in the administration of the law. He found that Mr. Worsley, Collector of Mozufferpore, made some such suggestion in his report on the draft Bill; he thought that the administration of the embankment law should be put under the Road Cess Committee. BABOO KRISTODAS PAL did not go with Mr. Worsley fully in the recommendation he had made, but he thought it was one which was entirely consistent with the suggestion he had now made. He therefore submitted this suggestion for the consideration of the Council.

The HON'BLE AMEER ALI remarked that there were various points in this Bill regarding which he entertained serious difficulty, but as he believed it would be explained away when the measure was considered in Select Committee, he would not occupy the time of the Council unnecessarily. There was

one point, however, to which he was bound to call the attention of hon'ble members. Section 75 of the Bill provided that any person who should without due authority cut through, or attempt to cut through, or attempt to destroy any public embankment, or open, or shut, or obstruct any sluice in any such embankment, or in any water-course, should, in case the act did not amount to mischief within the meaning of the Penal Code, be liable to imprisonment of either description for a term not exceeding one month, or to a fine not exceeding two hundred rupees.

He could not see the necessity of the words "in case the act shall not amount to mischief within the meaning of the Penal Code." The section was no doubt a transcript of section 54 of the existing Act, but that was no reason for perpetuating a mistake. The definition of the term "mischief" in the Penal Code was sufficiently comprehensive to include all possible offences intended to be made punishable by section 75. He did not therefore perceive the reason for enacting an offence outside the Penal Code, and would suggest that the words to which he had referred might be left out

The hon'ble the ADVOCATE-GENERAL remarked that the objection which had been raised did not appear to him to be of much practical force, because, if the offence which was defined in this section could possibly be committed by inadvertence, there could be no doubt that it would be met by a very slight fine.

HIS HONOR the PRESIDENT observed he did not doubt that the question which had just been raised would be taken into consideration by the Select Committee. And with reference to the suggestion which had been urged by the hon'ble member who first spoke, if he would bring forward any really practicable scheme under which those who were interested in the maintenance of embankments might have a voice in the administration of the law, His HONOR would be happy to give the matter his earnest consideration. It seemed to him that it might be a matter of practicable difficulty to get together a Board who were sufficiently interested in the question, and who were qualified to give an opinion in a matter which might affect the public outside of their own estates. But if the thing could be practically done, it was entirely in accordance with his own views to associate with the Collector a Committee of gentlemen who took practical interest in the matter, in the same manner as was done under the Drainage Act.

The motion was then carried and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Reynolds, the Hon'ble Mr. Allen, the Hon'ble Kristodas Pal, and the Mover, with instructions to report in one month.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

THE HON'BLE MR. REYNOLDS moved that the Bill further to amend "The Calcutta Municipal Consolidation Act, 1876," be read in Council He said that it would be in the recollection of the Council that when he moved for leave to introduce this Bill he stated that the sole object of the Bill was to alter the date of the commencement of the municipal year. The Bill had since been printed and was in the hands of the members, and it was so short that he need not

The Hon'ble Ameer Ali.

take up much time in explaining its provisions. It simply provided that the year should commence on the 1st of April, and that in respect of such licenses as might have been taken out, or which were required to be taken out during the current year 1882, in the case of yearly licenses twenty-five per cent., and in the case of half-yearly licenses fifty per cent., calculated upon the full amount chargeable upon such licenses respectively, should be paid, and that the licenses which would expire on the 31st December should continue in force till the 31st March following, and those which would expire on the 30th of June should continue till the 30th of September. The 6th section of the Bill merely provided—it was thought safer to introduce the section—that any one who neglected or refused to pay the additional sum payable by him under this Bill should be liable to a fine in the same way as if he had not paid the fee for his license under the Act now in force. The only other matter to which MR. REYNOLDS would call attention was the proviso to section 3. The Bill substituted certain months for certain other months in the Municipal Act. But it substituted those in the same rigid way in which the months were specified in the existing Act, and it appeared convenient that there should be given to the Government, on the application of the Commissioners in meeting, power to alter and substitute other dates for those now in the Bill. A very similar practice had at one time been adopted in the Calcutta University procedure. It was formerly the case that the regulations of the Calcutta University, which had the force of law, prescribed specific dates for the various examinations held by the University, and this would have led to considerable inconvenience if there had not been a saving provision which allowed the Syndicate to alter all dates. It was to obviate the occurrence of any similar inconvenience that he had inserted the proviso to section 3 of this Bill.

THE HON'BLE AMEER ALI said that he had a suggestion to offer with reference to section 6 of this Bill which would probably meet with the approval of the hon'ble member in charge of the measure. This section provided that whoever neglected or refused to pay the additional sum required under the two last preceding sections should be liable to a fine not exceeding three times the amount payable by him exclusive of the amount so payable. He would suggest the insertion of the words "within three days after service upon him of a written requisition in that behalf." The neglect to pay the amount might be accidental, as often happened to be the case, and it would be rather harsh to punish a man with such a heavy penalty for an accidental omission. He hoped the Select Committee, to which the Bill would be referred, would consider this point.

The HON'BLE MR. REYNOLDS observed that the suggestion which had been made by the hon'ble and learned member would be considered in committee.

The motion was then agreedto, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Allen, the Hon'ble Mr. Caithness, and the Mover, with instructions to report in a week.

The Council was adjourned to Saturday, the 11th February next.

By order of the President the Council was further adjourned to Saturday, the 18th February.

Saturday, the 18th February 1882.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General*,
The HON'BLE H. L. DAMPIER, C.I.E.,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE D. M. BARBOUR,
The HON'BLE T. T. ALLEN,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The HON'BLE AMEER ALI,
and
The HON'BLE BUDHEB MOOKERJEA, C.I.E.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

1. The HON'BLE MR. REYNOLDS moved that the report of the Select Committee on the Bill further to amend "The Calcutta Municipal Consolidation Act, 1876," be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. He said that the only alteration which had been made by the Select Committee was the introduction of a section to provide for the renewal of the registration of carts upon the same principle as that adopted in the Bill for the continuance of half-yearly licenses. By the law as it stood the effect of the law practically was that the owners of carts had to take out half-yearly licenses, although the Act spoke of the registration of carts and of the payment of registration fees, and not of the taking out of licenses; consequently, a section had been added to the Bill to make it clear that the provisions of the Bill relating to licenses should apply to the registration of carts.

With regard to the question of giving notice of payment of the additional sums which the Bill imposed, he observed that an amendment had been placed on the notice paper, but if the hon'ble member in whose name the notice of motion stood would allow him to offer an explanation, perhaps he would not find it necessary to press the amendment. The question had been considered by the Select Committee who thought that no notice was necessary, because they could not conceive any circumstances under which persons upon whom the additional sums were to be imposed would not become aware of their liability. The Bill would not interfere with existing licenses which would remain in force, and it was only on the renewal of a license that the additional sum imposed by the Bill would become payable. Anyone, for instance, who, during the present quarter, might have taken out a yearly license for Rs. 8 would hold a license which would remain in force till the 31st December 1882; but when he came in

January next to renew his license for the year 1883, he would be told that he must pay a sum of Rs. 2 for the continuance of his license to the 31st of March following. In the same way anyone who had not already taken out his license, and who wished to take out one for 1882 after this Bill became law, would not have a license in the form in which he applied for it, but he would be called upon to pay Rs. 10 instead of Rs. 8, and would be told that his license would continue in force till the 31st March 1883. The Select Committee had made this clear by inserting in section 4 the words "on the expiry of the same," and consequently they thought it unnecessary to make any special stipulation that notice should be given.

The HON'BLE AMEER ALI said that, after the remarks which had just been made, he did not think it necessary to move the amendment of which he had given notice, and he accordingly withdrew it.

The HON'BLE MR. DAMPIER asked whether the Select Committee had considered the case of a person who, having the intention of closing his business on the 31st March, did not take out a license for the following year. In a case like this, how was it proposed to recover the proportionate amount of license fee for the period of three months which intervened between the expiration of the old calender year and the new financial year. As he understood it, licenses expired now on the 31st December, and under this Bill the operation of such licenses would be extended for three months by the payment of a proportionate fee, and the mode of recovering such fee was when the licenseholder came up for the renewal of his license for the following year, the first of the financial years now to be adopted. But suppose he did not apply for a fresh license, but wound-up his business on the 31st March, he would have carried on his business for three months without having paid the additional proportionate amount of fee MR. DAMPIER asked whether it was that provision was not made for a case of that kind because, the cases being very few, it was not considered worth while to look after them.

The HON'BLE KRISHODAS PAL explained that as soon as a man's license expired he was bound to take out a fresh license; he was not authorized to carry on his business without a license. If a license expired on the 31st December, the holder of such license was required under the law to take out a fresh license on the 1st of January. If he intended to wind-up his business on the 31st March, he was still bound to take out a license for the year, but he would be entitled to a refund after he had closed his business.

The HON'BLE THE ADVOCATE-GENERAL observed that when a man knew that his license had expired he was bound to take out a fresh one, and if he failed to do so he was liable to prosecution under the Act.

The motion was then agreed to.

The HON'BLE MR. REYNOLDS moved that the Bill be passed. He said it was not altogether usual to move for the passing of a Bill on the day on which the report of the Select Committee was first taken into consideration, but though this Bill was one of no great importance, it was necessary that it should be submitted for the assent of the Governor-General in time to admit of its becoming law by the 1st of April. This might of course be done even if

there was an adjournment for a week, and he had no objection to such an adjournment if the Council desired it, but as he understood that there would be no further business ready for that day week, it seemed hardly necessary to trouble the Council to meet only for the purpose of passing a small Bill of this kind.

The motion was agreed to, and the Bill was then passed.

The Council was adjourned to a day of which notice will be given

Saturday, 1st April 1882.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR, *Presiding.*
The HON'BLE A. PHILLIPS, *Acting Advocate-General.*
The HON'BLE H. L. DAMPIER, C.I.E.
The HON'BLE H. J. REYNOLDS.
The HON'BLE H. A. COCKERELL, C.S.I.
The HON'BLE D. M. BARBOUR.
The HON'BLE T. T. ALLEN.
The HON'BLE KRISTODAS PAL, *Rai Bahadoor*, C.I.E.
The HON'BLE AMEER ALI.
The HON'BLE BHUDEB MOOKERJEE, C.I.E.
The HON'BLE MOULVIE MAHOMED YUSUF.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. DAMPIER moved that the Report of the Select Committee on the Bill to amend the law relating to embankments and water-courses be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The HON'BLE MR. DAMPIER also moved that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. He said that in making this motion he would call the attention of the Council to the salient points in which the Select Committee had made alterations in the Bill as it was referred to them by the Council.

It would be seen that in the definition section the Committee had added an explanation to the definition of "zemindar." The explanation was to the effect that, under certain circumstances there specified, the Government should be deemed to be the "zemindar." Advances for the repairs of embankments were made from the Exchequer, and the effect of this explanation would be that when it came to the apportioning of the expenses over the estates benefited for the purpose of recovering such advances, the Government itself would be held liable as zemindar in respect of the protection of such properties as it held for public purposes; for instance, the land occupied by irrigation works. The apportionment in respect of these estates being made on the Government as the zemindar, the result would be that the neighbouring proprietors would be

relieved of so much of the expense, and so much out of the advances originally made by Government for the execution of the embankment work would not be recovered at all.

In section 17 the Committee provided that any dispute as to the apportionment of expenses of altering a road or railroad, or for constructing a water-course under a road or railroad, should be decided by the Lieutenant-Governor, whose decision would be final. There was a certain apportionment of expenses provided for in the existing Act, but it did not provide who was to be the deciding authority, if there was a dispute between the parties.

The Committee had added sections 21 to 24. It was suggested first by Mr. Worsley, who was a very active Collector in matters relating to embankments, that matters of this sort might be made over to District Committees, representing the proprietors whose estates would be benefited and who would be liable to recoup advances to Government. The Hon'ble Member opposite (Baboo Kristodas Pal) was very strong on this point in the Select Committee, and as a representative man he wished to introduce clauses making it compulsory on the Government to appoint embankment committees in all districts and vest them with certain powers and functions. The Committee did not agree to that view, but had introduced these permissive clauses empowering the Government to appoint committees and to vest them with any powers (up to superseding the Collector) which the Government might think fit.

Section 72 was a somewhat important section. As the Bill was introduced it provided that in recovering expenses the Collector should follow the individual proprietor by the certificate procedure of the Public Demands Recovery Act; but if the circumstances made it necessary to act exceptionally, he could recover the expenses from the estate itself, or in other words the land was to be ultimately liable. What the Committee had done in section 72 was to formulate that liability of the land. The Committee had provided that if the estate was sold, the liability for these expenses still attached to the land, whether it was sold by private contract or by decree of court or for arrears of revenue. And Hon'ble Members would see that there was a clause about these charges being deemed to be borne in a certain way in the public accounts; the effect of that was that out of the surplus proceeds of a sale for arrears of revenue this demand should be a first charge before the surplus was available to be returned to the late proprietor, or to be applied in payment of his private creditors.

The Committee had added a new Part special to Orissa—sections 92-94. The Council was aware that Orissa was not subject to the general Bengal Embankment Act which this Bill would replace. The Acts relating to Orissa remained in force, but there were serious defects in them which experience had shown on points which, for Bengal, were provided for in this Bill. Amongst other things there was a great defect as to any provision for what was called the emergent procedure. If the Engineer should see absolute necessity to take a work in hand without going through the usual procedure, there was no clause in the Orissa Act which would enable him to do so. It

was absolutely necessary for the safety of life and property that he should be vested with such powers. The Committee had therefore provided these clauses making the emergent procedure, which was and would still be in force in Bengal, applicable to Orissa so far as it could be done; but, unfortunately, a part of that procedure was contained in those sections of the existing Bengal Act which would be considered beyond the authorit of this Council to re-enact if the Council once repealed them. The Council had therefore been obliged to let those sections out of the old Bengal Act stand unrepealed for Bengal generally, but they had no power to extend their application to Orissa. Sections 92 and 93 therefore extended to Orissa certain sections of this Bill merely making the reference to the Bill in those sections equivalent to references to the corresponding portions of the Orissa Act (XXXII of 1855).

In section 94 were enumerated certain other sections of this Bill which should also be applicable to Orissa; of these, section 4 vested lands occupied by embankments in the Government, section 5 was the one with which the Council were familiar about the use of land for the purpose of taking earth for the repairs of embankments, and the remaining sections were those which made it penal for any person, within a tract which had been proclaimed by the Lieutenant-Governor, to make alterations and additions to embankments and water-courses without previous permission from the Engineer. These were the sections which had been extended to Orissa because experience had shown the Government in the Public Works Department that they were absolutely required.

The motion was put and agreed to.

The HON'BLE KRISTODAS PAL said he had signed the report with certain reservations. It had been his misfortune to differ from his hon'ble colleagues on the Select Committee on certain important points, some of which were covered by the amendments of which he had given notice. The first of these was with reference to section 4, which provided that "every public embankment and every public water-course, and all land, earth, pathways, gates, bermes, hedges, belonging to, or forming part of, or standing on, such embankment or water-course * * * *, shall vest in the Government;" and the word "embankment" was described to include both embankments maintained at the expense of Government and embankments maintained on behalf of the proprietors or other persons interested in their maintenance; so that both public and private embankments came within the perview of section 4. It should be remembered that the primary object of this Bill was to remove the injustice committed against the proprietors of land by Survey officers by including lands as part of embankments in which these persons had the proprietary right. His amendment was to insert the following proviso at the end of section 4:—

"Provided that the vesting of lands in the Government as aforesaid shall not deprive any person of his right to use such lands in the manner in which he may have heretofore used the same."

The question raised by this amendment was not a new one. It was, he might say, threshed out in an official correspondence between the Government

The Hon'ble Mr. Dampier.

of Bengal and the Board of Revenue. Referring to the working of section 34 of the existing Act, Mr. Harrison, then Collector of Midnapore, wrote—

"In some cases earth is taken from cultivated land, the pits being dug in the midst and within the margin of the cultivation, and the land continues to be cultivated round their edges, and *in* them as soon as they become sufficiently shallow. Over such ditches I admit that no claim ought to be asserted, but in other cases the land at the foot of the embankment is entirely used for supplying earth. No cultivation has been attempted in it, and the proprietor does not attempt to exercise any act of possession over it. Such ditches, it seems to me, may most fairly be considered to be land belonging to, or forming part of, the embankment."

The Board of Revenue, it seemed, concurred in Mr. Harrison's view, and the Government accepting it issued the necessary instructions. In the spirit of the decision of the Government, BABOO KRISTODAS PAL proposed that, while ample provision should be made that the embankment officers should get earth from the neighbouring lands free of charge, no interference should be allowed with private proprietary rights. He thought that was both fair and equitable. This right had been enjoyed by proprietors from time immemorial, as Mr. Harrison's Embankment Manual showed. Government had hitherto maintained the public embankments in co-operation with the zemindars, that is by taking earth from lands belonging to them in the immediate neighbourhood of the embankments, and the zemindars had never claimed any compensation for earth thus supplied, and it was nothing but proper that that state of things should be continued. But when cultivation had been allowed in these lands and ditches and when the zemindar had the right to get rent from the occupiers of such lands, and rents had been decreed by courts of justice, BABOO KRISTODAS PAL did not see why the proprietary right should be taken away and the land should be vested *in toto* in the Government. It was true section 5 provided that the embankment officers could take earth required for repairs from the neighbouring lands, but when the land was once vested in the Government by section 4, the proprietors would have no right to complain if they should at any time be prevented from using the land in the manner they had done before. To lands which belonged to or formed part of a Government embankment, the Government might have an absolute right, but the case was different as regards lands abutting upon private embankments. The Government took over such embankments in trust for the interests of the public; the zemindar would bear the expenses of maintenance, the Government being merely the agent for the execution of the necessary work. In making over private embankments in trust to the Government he did not think the zemindars should forfeit the proprietary right in, and the privilege of, using the adjacent lands in the manner in which they had always used them. So, looking to the equities of the case and to previous practice, he thought it was but fair and just that the right of the zemindar to the use of the land without interfering with the embankment should be recognized by the Legislature.

HIS HONOR THE PRESIDENT asked the hon'ble mover of the amendment whether he did not think this amendment was more applicable to section 5 than to section 4 of the Bill. The class of lands which were referred to in

the amendment was included in section 5 and not in section 4. Lands used for purposes of repair were not vested in the Government; they were only deemed to be at the disposal of the Government for the purpose of obtaining earth or other materials for the repair of embankments.

The HON'BLE KRISTODAS PAL explained that the lands which were vested in the Government under section 4 were all lands "belonging to" or forming part of, or standing on, any embankment. It was quite right that lands "forming part of, or standing on," embankments should vest in the Government. He objected to the words "belonging to" in line 5 of section 4, and with the permission of the President he would withdraw the amendment of which he had given notice and move instead to omit the words "belonging to."

The HON'BLE AMEER ALI thought there could be no objection to the omission of the words "belonging to"; the meaning of the section would remain the same, and no harm could arise by omitting these words, whilst the impression which the hon'ble mover of the amendment spoke of might be removed.

The HON'BLE MAHOMED YUSUF suggested that the difficulty might perha be obviated by amending the section in this way—"Every public embankmen and every public water-course, together with the land on which it stands, and all earth, pathways, gates, bermes, and hedges belonging to, or forming part of, or standing on, any such embankment or water-course," &c.

The HON'BLE MR. REYNOLDS observed that if the words "belonging to" were omitted, as proposed by the hon'ble mover of the amendment, there would be considerable doubt as to whether bermes and hedges were "part of, or stood on," an embankment; but there could be no doubt that they "belonged to" it. Therefore he thought the omission of the words "belonging to" would be prejudical to the complete meaning of the section.

The HON'BLE THE ADVOCATE-GENERAL said he did not find that bermes and hedges were anywhere defined in the Act to be part of an embankment, and therefore it appeared to him that the words "belonging to" had better be retained as guarding against the possibility of bermes and hedges belonging to an embankment being held to be excluded from the scope of the section.

The HON'BLE MR. DAMPIER thought the remark just made by the learned Advocate-General was quite conclusive. MR. DAMPIER had been inclined himself to accept the amendment in deference to the wish of the hon'ble member, which was pressed both in the Select Committee and at present. But after what had fallen from the Advocate-General, he could not do so.

HIS HONOR THE PRESIDENT said it seemed to him there could be no possible doubt that the amendment should not be accepted, because the lands to which the hon'ble member referred were not the lands which were included in section 4; they were the lands from which earth was taken and were referred to under section 5. What was referred to in section 4 were the lands which formed part of the embankment itself, and the various parts which went to make up the embankment. The use of the words "belonging to" was not with the object of including something which was not a part of the embankment, but simply to include what formed part of the embankment itself. Therefore

it seemed to His Honor that the words "belonging to" were absolutely necessary to guard against any of the component parts of an embankment being excluded from what was intended to be vested in the Government. Lands which were taken up for repairs were separately and distinctly mentioned in section 5, which did not vest such lands in the Government, but simply gave a right of user, and did not authorize the taking of those lands for any other purpose whatever. He thought the difference was quite apparent, and that there was no possibility of any misconception on the subject.

The question that the words "belonging to" in line 5 of section 4 be omitted was then put and negatived.

The Hon'ble Kristodas Pal moved that the words "or which may be hereafter included therein" be inserted after the word "annexed" in line 6 of section 42.

The motion was agreed to.

The Hon'ble Kristodas Pal moved that the words "if he deems it necessary for the public interests" be inserted after the word "may" in line 3, clause 2 of section 43. He based this motion on the ground that the public interests should be considered equally in making additions to Schedule (D), as in removing from it embankments which were now included in it. The object was to enable those interested to submit representation to Government as to the desirability of bringing an embankment under the schedule.

The Hon'ble the Advocate-General said he thought it would not be advisable to insert the words proposed. The Lieutenant-Governor would of course not take the action indicated if it was not for the public interests, but the insertion of these words might lead some ingenious mind to suggest that an enquiry should be instituted as to whether the Lieutenant-Governor did think the inclusion of any particular embankment was necessary for the public interests. The action taken by the Lieutenant-Governor must be deemed to be for the public interests, and it seemed superfluous to insert words which would have the effect of putting it in a hypothetical way.

The Hon'ble Mr. Dampier remarked that the two cases dealt with in the first and second clauses of this section were not on all fours. The insertion of the words proposed would have the effect, as it were, of putting the Lieutenant-Governor to the proof.

The motion was put and negatived.

The Hon'ble Kristodas Pal moved the insertion of the following words at the end of section 47:—"So far as it may be practicable in consultation with the persons interested in such works." He said he had strongly urged this point in Committee, but his colleagues did not agree with him; they thought it might involve the necessity of serving notices, which was always a tedious process, and might defeat its own object. His own impression was that if, when surveys were first made, the zemindars interested were allowed an opportunity to explain their views to the Engineer, disputes and litigation might be minimised. This point was to a certain extent argued before the Embankment Committee of 1880, and in a note to their report the following occurred:—

"*Paragraphs* 36, 37, *and* 40.—*Note by Maharajah Jotendro Mohun Tagore.*—The zemindars can exercise no effective check upon estimates. It is admitted that 'it is quite impossible for the Collector to exercise any control over the details,' and 'that the Superintending Engineer is practically in the hands of the Executive Engineer.' But the zemindar is in no better position. He cannot check even the measurements inasmuch as he has not the means of testing the different sections from which the measurements have been made; each zemindar can look to the portion of the embankment which covers his own estate, but the sections are taken in an extended scale. As for cost of labour, the Public Works rates and local rates paid by private individuals are apt to differ, and unless some superior authority like the Collector intervenes, no proper control can be exercised upon the estimates. I think a paragraph should be added pointing out the difficulties in the way of the zemindar in checking estimates."

"*Remarks by Messrs. Dampier and Harrison.*—The above note has been made by Maharajah the Hon'ble Jotendro Mohun Tagore, to whom, as being much interested in the subject-matter of this report, it has been shown. Colonel Haig has left, and the Committee is no longer complete at the time when the notes are received; hence the remarks added to this note, and to those attached to paragraphs 43, 44, 49, and 53 are those of Mr. Dampier and Mr. Harrison only. We admit that the zemindar has great difficulties to contend against in effectively checking the Engineer's estimates, but they are different altogether, not merely in degree, but in kind, from those we are referring to above. The Collector and the Superintending Engineer have no separate establishment at all wherewith to check the Engineer's estimates. If the estimates represent a breach as 120 feet long and 11 deep, it is quite impossible for an officer who cannot visit the spot to say that it is only 100 feet long and 9 feet deep, or if the Engineer states that a certain embankment was over-topped in a recent flood, it is impossible for him to say that it was not. The zemindar has an ample local establishment to enable him to check the estimates, but his difficulty is that he cannot understand them. The estimates are prepared, hoodah by hoodah, and mile by mile, and it is no doubt very difficult for a zemindar to say for certain that there is not the amount of earthwork to be done which the estimates represent. This could be remedied if it were provided that any zemindar might by previous application be present in person or by deputy when the measurements are made. So very few zemindars make any effort to check the estimates that it would only be an obstruction to business to require any notice to be served on them all, but it might be prescribed that if any zemindar applied specially to be kept informed of the day when the work actually done would be measured up, previous notice of not less than five days should be given him to enable him to be represented."

Baboo Kristodas Pal quite agreed with his colleagues in Committee that it might be difficult to serve notice on all the zemindars interested, but some provision, he thought, might be made to the effect that the Engineer should frame his estimates in consultation with those interested, and he would then take the necessary steps before submitting his estimates. It was for this reason that he wished to add this clause. If the zemindar and the Engineer could be made to act conjointly in the preparation of estimates, it would greatly reduce disputes and litigation.

The Hon'ble Mr. Dampier said it was very unpalatable for him, motion after motion, to have to oppose his hon'ble friend, when he really agreed heart and soul in the principle of the amendments which he proposed. He certainly agreed that an Engineer preparing estimates and plans, the results of which were eventually to be paid for by the zemindars, would not be doing his duty if he refused to listen to those interested when they wished to point out that the work could be done as effectively in a more economical manner.

The Hon'ble Kristodas Pal.

But when introducing this Bill, MR. DAMPIER had particularly said that it was a Bill which must be supplemented immediately by the issue of rules and orders by the Lieutenant-Governor on the executive side He would give an instance to show why he objected to the introduction of these apparently harmless little words. His hon'ble friend had said that he did not ask for the service of notices, but imagine a case going into court, and the point turning upon the question whether the estimates were prepared "so far as it may be practicable in consultation with the persons interested in the work." It would be argued that notices had not been served and therefore all that was practicable had not been done and that the law had consequently not been complied with, and then all the proceedings might be upset on this point. Another illustration might be given from the very extract which the hon'ble member had read to the Council. The Committee to which his hon'ble friend referred was an Official Committee, consisting of Colonel Haig, Mr Harrison, and Mr. Dampier, who were appointed to report upon the working of Act VI (B C) of 1873, with reference to Midnapore. Why then did they show their report to Maharajah Joteendro Mohun Tagore? Simply because it was their duty to make their report, to use the words of the amendment, as far as possible on consultation with persons interested. There was no doubt that the Maharajah was very much interested in the question, and therefore the Committee thought fit to consult him, and MR. DAMPIER had no doubt that more or less every Collector who was interested with the working of the Act would do the same. But he objected to the introduction of these words because their only effect would be to give another opportunity for finding flaws in the proceedings, if inadvertently some omission took place in the service of notices and the like.

HIS HONOR THE PRESIDENT quite agreed with the principle of the amendment, but he thought the introduction of the words proposed would make it very difficult to put the Act into force. He thought it ought to be left to the Government to take the necessary measures to see that those interested should have an opportunity of representing their views, and he had no doubt that in the rules passed under the Act provision would be made for the purpose. As he had said before the scope of the amendment was entirely in accordance with the principle upon which this Act was being passed, and with present practice: indeed, it was the policy of giving those interested in embankments a better and safer position than they had before, which led to this Bill being brought forward.

The amendment was then by leave withdrawn.

AMENDMENT OF THE EXCISE ACT.

THE HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to amend the Bengal Excise Act, 1878. He said he felt that he ought to ask the indulgence of the Council in rising to ask for permission to introduce a Bill for the amendment of an Act which had been amended only last year, more especially as the amending Bill of last year was in his charge. But his excuse was that the weak points of an Act were apt to remain undetected until they were brought to prominent notice by the experience gained in the practical working of the law. In this case he believed there could be no difference of

opinion as to what the intention of the Legislature was, but the language which was used in the Act was unfortunately such as to carry out that intention somewhat imperfectly, and the result had been that when an attempt was made to put the law into operation against a supposed offender, the High Court set aside the conviction which had been obtained before a Magistrate, and pronounced that no offence against the law had been committed. If hon'ble members would refer to the Excise Act of 1878, they would find that section 15 prescribed certain definite quantities for the retail sale of exciseable articles, and it was provided that, subject to any other special direction by the Board of Revenue, the sale of such articles in larger quantities than those specified should be held to be a sale by wholesale, and that a sale in less quantities should be a sale by retail. Then section 17 provided that no person who was not a licensed vendor should have in his possession a greater quantity of any exciseable article than that specified in section 15. And the corresponding penalty section was section 61, which declared that any person other than a licensed manufacturer or vendor, or a person duly authorised to supply licensed vendors, having in his possession any greater quantity of any exciseable article than the quantity specified for each article in section 15, without a pass from the Collector, should be liable to fine.

The quantity of tári specified in section 15 was 12 seers. MR. REYNOLDS thought it was possibly the case that the specific quantities mentioned in the Act were not very carefully considered before the Act was passed, because it might have been thought that as a discretion had been reserved to the Board of Revenue to alter those quantities, it was a matter of no great importance what exact quantities were specified. But, however, that might be, the Board found it necessary to reduce the quantity in respect to tári from 12 to 4 seers; and that reduction was duly notified. A man was subsequently prosecuted for having in his possession 6 seers of tári, being a quantity in excess of the quantity authorised to be kept by persons who were not licensed vendors; he was convicted by the Magistrate, and sentenced to a fine, but on the case being referred to the High Court, the Court decided that no offence had been committed under section 61, because that section referred to the quantities *specified* in section 15 and did not cover any different quantity which might be notified by the Board under the power vested in it. MR. REYNOLDS did not wish to find fault with the decision of the High Court. Section 61 being a penal section, the obvious principle of law was that it should be strictly construed, and when so construed it did not cover the altered quantity of tári prescribed by the Board.

The object of this Bill was simply to remove this blemish, and to carry out what was no doubt the intention of the Legislature, that the penalty provided by section 61 should apply not only to the actual quantities enumerated in section 15, but also to any variation of those quantities which the Board might notify under the wording at the beginning of the section, which reserved to the Board the power to alter any of those quantities.

The HON'BLE AMEER ALI said that as the hon'ble mover was about to amend the Act he thought it would be advisable to take this opportunity to

The Hon'ble Mr. Reynolds.

explain the meaning of the word "possession" in section 61. There had been a case lately before one of the Presidency Magistrates in Calcutta which gave rise to a discussion as to the meaning to be attached to the word "possession," viz. whether a person who was simply a transmitter of imported exciseable articles which were to be despatched to places out of Calcutta, had "possession" of such articles within the meaning of the Act As some difficulty had arisen on account of the wording of the section, probably the hon'ble member would take this opportunity to make the meaning of the word "possession" clear, so as to leave no doubt in the matter.

The motion was agreed to.

The Council was adjourned to Saturday, the 15th instant.

Saturday, the 15th April 1882.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The HON'BLE A. PHILLIPS, *Officiating Advocate-General.*
The HON'BLE H. L. DAMPIER, C.I.E.
The HON'BLE H. J. REYNOLDS.
The HON'BLE H. A. COCKERELL, C.S.I.
The HON'BLE D. M. BARBOUR.
The HON'BLE T. T. ALLEN.
The HON'BLE AMEER ALI
The HON'BLE BHUDEB MOOKERJEE, C.I.E.,
and
The HON'BLE MOULVIE MAHOMED YUSUF.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. DAMPIER said that before moving that the Bill to amend the law relating to embankments and water-courses be passed, he might just mention that it had occurred to him that it would be better to put the penal sections of the Act into a separate part by themselves. Part VII was a miscellaneous one and was very lengthy, containing a variety of provisions besides the penal clauses, and it was usual to put the penal sections into a Part by themselves. He therefore proposed that the Secretary be instructed to do this. Then there was an amendment just brought to Mr. DAMPIER's notice in section 94, which made certain parts of this Act applicable to Orissa. Section 18 was one of the sections which were extended by section 94. That section had two clauses, but clause (*a*) he found was already contained in the Orissa Act, and clause (*b*) was unnecessary; therefore his first amendment in section 94 was to omit the figures "18." The other amendment was this—Section 76 was one of the sections to be extended to Orissa, and it was proposed to add to section 94 the words "the words "Superintendent of Embankments" being substituted for the word

'Collector' in clauses (*a*) and (*b*) of section 76." Section 76 was the penal section which provided that when a tract of country had been notified by the Lieutenant-Governor, alterations might not be made without the sanction of the Collector (as the Bill now stood), but in Orissa the Superintendent of Embankments would be the officer whose permission would be necessary.

The amendments were severally agreed to.

On the motion of the HON'BLE MR. DAMPIER the Bill was then passed.

AMENDMENT OF THE EXCISE ACT.

The HON'BLE MR. REYNOLDS moved that the Bill to amend the Bengal Excise Act, 1878, be read in Council.

The motion was agreed to.

The HON'BLE MR. REYNOLDS also moved that the Bill be referred to a Select Committee, consisting of the HON'BLE MR. ALLEN, the HON'BLE AMEER ALI, the HON'BLE MAHOMED YUSUF, and the Mover, with instructions to report in a fort night. He explained that the Bill, as introduced, was of so simple a character, being nothing more than a verbal amendment of the law, that he had intended to ask the Council to dispense with the formality of referring the Bill to a Select Committee, and to pass the Bill that day. But since he had taken charge of his office at the Board of Revenue, he found that his predecessor had proposed four or five other amendments of the law, some of them of a more important character than those contained in the Bill. He therefore thought it necessary that the Bill should be referred to a Select Committee.

The motion was agreed to.

ADJOURNMENT OF THE COUNCIL.

HIS HONOR the PRESIDENT adjourned the Council for a fortnight, and in doing so he said :—" Before that day arrives, I shall have left India and made over office to my successor. Therefore, before leaving, I wish to take this opportunity of saying farewell, and of thanking you for the very great assistance you have given me in the work of this Council. We have not attempted to legislate in this Council merely for the sake of legislation, and we have introduced no measures into the Council until they have been proved to be necessary, either for administrative purposes or in consequence of distinct demands from the public; and we have, as long as I have known the Council, attempted to keep rather behind than in advance of the public demands for legislation. But I think our Statute-book shows that we have passed some very useful measures during the last few years. Our sittings here have not been very lengthy or tedious, but they really represent a very small portion of the time which has been given up by you to the irksome and severe work of sittings in Select Committee. You all know how very much of the time of members is taken up in this way, and that it is done with great sacrifice, all of you having other duties to attend to."

The Council was adjourned to Saturday, the 29th instant.

By order of the President the Council was further adjourned to a day of which notice would subsequently be given.

Saturday, the 9th December 1882.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding;*
The HON. A. PHILLIPS, *Acting Advocate-General.*
The HON. H. L. DAMPIER, C.I.E.
The HON. H. J. REYNOLDS.
The HON. C. P. L. MACAULAY.
Colonel the HON. S. T. TREVOR, R.E.
The HON. T. T. ALLEN.
The HON. KRISTODAS PAL, RAI BAHADOOR, C.I.E.
The HON. J. E. CAITHNESS.
The HON. BHUDEB MOOKERJEE, C.I.E.
The HON. MAHOMED YUSUF.
The HON. HARBUNS SAHAI.

STATEMENT OF BUSINESS BEFORE THE COUNCIL.

HIS HONOR THE PRESIDENT said:—"Gentlemen; before we proceed with the business before the Council, which is almost of a formal nature, I wish to say a few words regarding the character of the Bills which are likely to come before us for consideration this session. I should have been glad if I could have congratulated you in reassembling for legislative work this year, if we could have done so in the new Chamber which is preparing for us in the Secretariat building in Dalhousie Square. But circumstances have prevented the completion of this building, and we are obliged to continue our labours in this Chamber, which so long has been associated with the legislative work of Bengal. One feels a natural regret in parting from a place like this, which has so many associations connected with it; for I believe I am right in saying that it was in this room that Lord Dalhousie sat when he presided over the first Legislative Council of India, describing it as "the cradle" of legislative institutions in this country. Since then things have very much developed, and our legislative work is done very much more by means of representative bodies. We have not only non-official members assisting in our work of legislation, but gentlemen connected with different provinces are members of our Council, and bring to bear upon its deliberations a wider scope of knowledge and experience. I also remember that it was in this room that Mr. James Wilson introduced the first measure of direct taxation when he introduced the Bill for the establishment of an income-tax in India—a measure which, some of our honorable members will remember, created a good deal of discussion and excitement twenty years ago—a measure which has now developed into the form of the license-tax which prevails throughout India at the present moment. This Chamber is also

connected with the memories of many eminent men, both official and non-official, who have promoted by their advice and assistance the enactment of many useful legislative measures.

The first Bill which will receive your attention is one of which there is a notice on the paper in the hands of Mr. Reynolds. It is connected with the Excise Act, and is a relict of the last session's work. I am glad to find that the proposal he intends to submit to us is to refer the Bill back to the Select Committee, because an honorable member has mentioned to me his wish to propose an amendment, and as there will be very little time to consider to-day the nature of the amendment proposed, it is desirable that what he wishes to suggest should be considered by the Select Committee when the Bill comes before them, and we shall then be prepared to discuss the merits of his proposal more fully than we should have been if it had been brought forward for the first time before us to-day.

Then there is a small Bill connected with the amendment of the Partition Act. As honorable members are aware, partitions now extend down to an estate of which the sudder jumma is so little as one rupee in the year, and very often in these cases—cases in which the sudder jumma is one rupee or little more—the complications are very much greater than they would be in large estates. The whole array of Government official action is brought to bear on the partition of these estates, and the time, labour, and cost of the operation impose very great hardship and lead to no material good. It has been thought advisable to raise the limit from one to ten rupees, as the limit under which official partitions by Collectors should not be undertaken. In its character therefore it will be but a small measure, though it may involve interests which will require careful consideration. My friend the Hon. Mr. Dampier has taken charge of this measure.

I have also to bring to your notice a measure connected with tramways. As you are aware, the present Act on the subject is limited to the Municipality of Calcutta, and proposals have come before the Government asking for an extension of similar powers to other municipalities throughout the Presidency for the establishment of tramways in their jurisdictions. I have found during my recent travels that the idea of establishing tramways as a public convenience is greatly affected in different parts of the country. There is a proposal made to me for such means of conveyance in the town of Rampore Beauleah, another in the city of Patna, and another in the town of Howrah, and in other places; and in one way or another we have learnt that it is the wish of the people to establish tramways, and legislative powers are required to enable them to carry it out. But in the consideration of this question, it has come to our knowledge that very often tramways which are commenced within municipal limits are capable of being extended, and are to be extended beyond the limits of the municipality. Therefore, in framing a Bill, we have not only to legislate for it as a municipal measure, but to take power which will enable municipalities or the Government, or other local bodies, to carry them on beyond the limits of purely municipal administration. I propose to ask my friend Colonel Trevor to take charge of this Bill.

There is also a question connected with the water-supply to the suburbs; one which affects immediately and is of great interest to a great body of people in the neighbourhood of Calcutta, and which was brought prominently to notice by a pleasant visit which we paid yesterday to the water-works at Pultah, where I had the opportunity of discussing the subject with several members of the Calcutta Municipality and its Chairman. I understand a resolution has been adopted by a Committee of the Town Commissioners, which the Chairman proposes to submit as soon as possible to the Government, as regards their own requirements for the supply of additional water to the city of Calcutta itself; and it is to be hoped that, in giving effect to that measure, we may be enabled, after communication with the Suburban Municipality, to arrange for a supply of good water to the suburbs. The terms on which that extension should be carried out have not yet been settled, and we shall have to refer to the Suburban Commissioners. But if the proposal of the Calcutta Municipality comes before me in a short time, as I expect, I hope that means will be available of coming to some fair and satisfactory settlement of the question of extending the benefits of the water-supply to the suburbs also.

A small Bill connected with the amendment of the Calcutta Police Act has originated from a desire to supervise and control the use of the maidan—a use to which it is constantly put—in breaking in horses; a practice largely objected to as dangerous, as destructive to the beauty of the maidan, and which it requires power to regulate: and a small measure will therefore be necessary to give that power to the police authorities in this city.

There is also a Bill connected with the employment of hill coolies in Darjeeling and Kurseong. My Hon. friend Mr. Macaulay is going to take charge of that Bill, the object of which is to regulate and supervise the registration of coolies in the hill station of Darjeeling. I believe this measure will be ready for introduction, or at any rate for its first stage, at our next meeting.

I should mention too that there is a small Bill required for the amendment of the Calcutta Port Improvement Act, which is pressed on us by the Port Commissioners of this place, and another connected with the amendment of Bengal Act IV of 1879 for the levy of fees on certain passenger boats. The latter Bill, I believe, has not yet been prepared; it is necessary for controlling the management of steamers and vessels which ply more than 30 miles from the port of Calcutta.

These are all passing measures, important in themselves, but not of very large consequence, and they will not probably require very much time or attention on the part of the Council. The prominent measures which will receive our attention are those connected with the new and enlarged system of local self-government. It is not necessary for me now to enter into any detailed discussion of the principles of the question which, by public resolutions of the Government of India, and by the public utterances of His Excellency the Viceroy, have become familiar, probably, to all members of the Council present here. It is a measure which the Viceroy is very anxious to see established throughout the country, and which, speaking personally for myself, I am equally anxious to support as fully as I can. I think, after a rule of a hundred years in India,

it would rather be a disgrace to us than otherwise if we could not say the time has come when we should give to the people of this country a much larger share in the administration of their local affairs. The fact is, however, that in Bengal we can say that a measure of local self-government has already been conceded to the people in a much larger manner than most people are aware of. It has certainly come upon me with some force, in visiting different districts, to find that in the conduct of municipal administration the Municipal Committees and Road Cess Committees and Branch Committees have already a very large share of independence, and that there are places in which the management of local affairs is already, for all practical purposes, in the hands of the natives themselves. I speak therefore of the new measure which will come before the Council as a measure of enlarged self-administration. The form which it is possible legislation on this general subject should take, would be in the way of two separate Bills—one in connection with municipalities, and the second in connection with the establishment of local boards. It is impossible to amalgamate the two Bills into one, because the broadest departure which the new system will take will be in the establishment of local boards. Municipalities have already been in existence for many years in these provinces; and, as I have said, municipalities have already acquired to a large degree, by the training they have received and by the advice and assistance of Collectors and Magistrates, and the co-operation of officials generally, education in the art of self-government, which they are quite willing and able to take into their own hands at once. I think the probability is that there should be two classes of municipalities—though I do not speak with certainty here—one in which the whole freedom of the elective system will be absolutely introduced, with the freedom of electing their own commissioners and the right to elect their own Chairman and Vice-Charman, accompanied by entire freedom of managing their own affairs, except a distant control which will be referred to hereafter. The second class of municipalities will be confined to parts of the country which are not so far advanced, and do not deserve at once that absolute freedom which will be given to more advanced places. But in both of them, as regards the elective system, I will withdraw altogether, as far as I am concerned, the restriction which has hitherto been imposed as to the necessity for one-third of the rate-payers of the town requiring the introduction of the elective system before it can be conceded. If on the representation of any considerable number of inhabitants it is apparent that the desire is to have the elective system in its entirety, and there is no real or deserving opposition on the part of the local officers of the Government, the Government will be ready at once to concede to them that right which the law will give them of having that system introduced. It is impossible to go into details at present, but if you have followed the whole course of writing and discussion which has taken place upon it, I can say at once now that the question of the franchise, of the qualifications which will fit a man either to vote or to be a member, as originally put forward in a resolution which I issued in July last, will be considerably reduced. I think it will be found, by the experience we have gained, that that franchise is too high. I also intend and hope that

it will be secured by the Bill that educational qualifications should give the right to vote and sit as representatives of municipalities.

In coming to the question of local boards, we come to a new thing altogether. We contemplate adopting what we already possess in Bengal—the sub-divisional unit as a head centre of the local board system, and on that basis introducing, wherever we can, local boards to manage the affairs of their own jurisdictions. But it may be quite possible to go a little further in the way of utilising that institution which is the most ancient in India, and which we have attempted to revive on a somewhat sounder basis by the Chowkeedari Act of Bengal, namely the punchayet system; to utilise it as a part and parcel of the local board arrangements. A Committee which is now sitting on the question of the Chowkeedari Act will put before us the facts which may enable us to bring in the punchayet system in villages, going down to the lowest units, as local bodies which can be brought into operation as supplementary to the establishment of local boards in different parts of the province. Generally these will be the outlines of the measure which the Government will submit for your consideration. The Viceroy, in laying down broadly and generally the principles which he desires to see established, has wisely, I think, left very much of the details to the discretion of local Administrations themselves. It is a wise decision I think, because no uniform plan or law will suit the circumstances and conditions of different varying provinces and administrations in India; and what will suit us might well be understood not at all to fit in with the wants of Madras and Bombay. While I have hitherto considered these large matters on my own responsibility with the advice and assistance of my Secretaries, I am very glad to be able to come to you now for advice and assistance to secure for those measures a satisfactory and successful issue.

EXCISE ACT AMENDMENT BILL.

The Hon. Mr. Reynolds moved that the Bill to amend the Bengal Excise Act, 1878, be referred back to the Select Committee for the purpose of considering further amendments therein. He said that the report of the Select Committee had been printed and circulated, and was in the hands of honorable members, and in the ordinary course of things he should to-day have presented it to the Council, and have moved that it should be taken into consideration. But circumstances had occurred which appeared to make it desirable that the Bill should be referred back to the Select Committee for further report. Since the report of the Select Committee was drawn up, a question had arisen regarding the importation of rum from the North-Western Provinces into Lower Bengal. This importation, which dated from the establishment of a large distillery at Shahjehanpore, had now reached about 25,000 gallons a year, whereas the consumption of country rum manufactured in Bengal itself amounted to only about 15,000 gallons. It was therefore desirable, and indeed necessary, to prescribe the rules under which this rum might be imported and

bonded either in Calcutta or in the mofussil. Draft rules had accordingly been drawn up by the Board of Revenue, but on their being laid before the Legal Remembrancer, he was of opinion that the law as it stood did not give the Board or the Government power to pass such rules; and that, if it was desired to lay down any rules on the subject, a section conferring the necessary power must be inserted in the Act.

In addition, however, to this point, it had been brought to MR. REYNOLDS' notice that the clauses of the Bill, as drafted by the Select Committee, were susceptible of some further improvement. In amending sections 15 and 61, it was the object to make the penalty section applicable not only to the possession of larger quantities than the quantities specified in section 15, but to the possession of larger quantities than such quantities as might be fixed by the Board of Revenue. But it was remarked last year by the High Court, in dealing with an appeal which came before them under section 61, that the Legislature could never have intended to give the Board of Revenue power to restrict the specified quantities, but only power to increase them; and it had been suggested to him that this ought to be made clear in the Bill now before the Council. He was quite prepared to admit the reasonableness of making this amendment, but if this was to be done, the quantities specified in section 15 would have to be reconsidered, and it was best that the Bill should be referred back to the Select Committees for this purpose.

There were some smaller amendments which it might be convenient to take the opportunity of making. From a memorial sent up to Government from Eastern Bengal, it appeared that there might possibly be some ambiguity in the use of the word "tari" without a definition explaining the sense in which the word was used, and it would probably be better to introduce a definition, as had been done in the Northern India Excise Act of 1881. It would perhaps also be convenient to explain more clearly the meaning of the word "possession" in section 61.

The HON. KRISTODAS PAL said he rose to support the motion, and in doing so he desired to express his hope that the definition of "tari" would be based on a correct understanding of the article as used by the people of this country. The definition, as it obtained in Act VII of 1878, declared that "fermented liquor" included "tari, fresh or fermented." The words used showed that the definition was very inconsistent; it was, in fact, a contradiction of terms; "fermented" was defined to be fresh or unfermented. The word "tari" really meant the fermented juice of the palm or the date-tree; but fresh juice of the palm or the date was not "tari." But as the word "fresh" was used in the Act, the Board of Revenue in a circular (Board's Rules of 1878, vol. I, page 349) has declared that tari means "the juice of the date-tree or of the tal or palm-tree, and is used either when freshly drawn or after fermentation." The object of the Excise Act is to tax intoxicating articles, but fresh date-juice or fresh palm-juice is not intoxicating, as any one acquainted with the circumstances of the country pretty well knew. But under the operation of the Board's rule, which was derived from the definition of "tari" in the Act, considerable abuse and hardship were committed.

The honorable mover had referred to a petition from Eastern Bengal from which, with the permission of the Council, BABOO KRISTODAS PAL would read the following extract. It was a petition from the Eastern Bengal Landholders' Association, which stated as follows:—

"That the Board of Revenue has defined tari (Board's Rules, 1878, vol. 1, page 349) to be the juice of the date-tree or of the tal or palm-tree, and is used either when freshly drawn from the tree or after fermentation." Your memorialists humbly submit that the first part of this definition is contrary to the language of the country. The word 'tari' is always understood to mean the fermented juice of the tal or of the date-tree, and it is the former that is chiefly used for intoxicating purposes or for leavening bread. The juice of the date-tree, either in the fresh or partially boiled state, is always called khajur ras, and is invariably used either as a cooling drink or for manufacturing gur, or as a substitute for gur in the preparation of puddings or sweetmeats. This khajur ras has no intoxicating power and is never used for intoxicating purposes.

That since the last few years villagers possessing date-trees and using the juice for preparing gur, or as a substitute for gur in the partially boiled state, have been subject to a good deal of oppression. Fines of Rs. 25, Rs. 30, or even Rs. 40 have been imposed on people for having a few date-trees round their homesteads without a license. Your humble memorialists have been greatly pained to hear that very large sums have been realised in the shape of such fines from all the districts in this division. As an incentive to policemen and informers for detecting people dealing in khajur ras without a license, large rewards are given to them out of the fines realised. It is easy to see how wide a door is thus opened to extortion and oppression. For each case sent up there must be a considerable number in which poor ryots are obliged to pay hush-money to policemen and informers on the mere threat of being prosecuted."

BABOO KRISTODAS PAL believed the Government had made some enquiries into the truth of the statements contained in that petition, and his honorable friend was doubtless in possession of the facts which the enquiry had elicited. But it appeared from the last report of the Board of Revenue that the statements of the petitioners were greatly borne out by official records. The chapter on "tari" in the Board's last report contained the following para-graph:—

"During the year under review 30,268 licenses were issued for the sale of tari against 25,562 licenses issued in 1880-81, as shown in the margin. The increase was chiefly due to the number of additional licenses issued for the sale of unfermented tari in the districts of Dinagepore, Dacca, Backergunge, and Tipperah, owing to the exertions of the local excise officers in suppressing unlicensed sales."

Year.	Fermented.	Unfermented.	Total
1880-81 ...	16,504	9,058	25,562
1881-82 ...	16,411	13,857	30,268

It might be easily inferred from the foregoing extracts what amount of hardship, trouble, annoyance and loss were inflicted upon the poor people who were engaged in the sale of the fresh juice of the palm or date. Palm-juice, he believed, became fermented in two hours, so practically palm-juice was seldom to be found in an unfermented state. But the date-juice generally, as he was informed by competent persons, did not get fermented till twelve hours after it was drawn from the tree. Honorable gentlemen must have seen in Calcutta persons going about with pots of date-juice for sale, and children delighted in drinking it. Surely, if it was intoxicating, their parents would not have allowed them to drink it. It was the poor man's luxury, and he

hoped the law would not be tolerated which would deprive the poor man of this country of such a cooling, palatable, and innocent beverage. He would not refer to the policy which had led the Government of India to veto the Bombay Act that sought to tax the use of the mohwa flower; but he submitted it would not be consistent with that policy to bring the fresh or unfermented date-juice under excise taxation. He therefore earnestly hoped that the Select Committee would take this matter into consideration.

The HON. MAHOMED YUSUF said he agreed that the Bill should be sent back to the Select Committee, for there were one or two matters which required consideration. One of these was that in certain respects it seemed desirable that certain parts of the Bengal Act should be assimilated to the Imperial Act passed for the North-Western Provinces. In the first place the definition of fermented liquor, as contained in Act XXII of 1881, included both the palm-juice and the *khajur ras*; but at the same time that definition excluded both the fresh palm-juice and the fresh *khajur ras*, and he thought that that definition might well be adopted by the Select Committee in amending the Bengal Excise Act, 1878, and incorporated in it. Secondly, the explanation to section 21 of the said Imperial Act might also well be taken and incorporated in the Bengal Act, which, so far as it dealt with the question of possession, was susceptible of a little improvement. As matters at present stood under the Bengal Act, a question arose before one of the Presidency Magistrates whether a person, who had merely a temporary possession, in the character of a mere transmitter of exciseable articles, could be said to be in possession under section 17, so as to bring him within the penal sections of the law. This question was referred at the time when leave was given for the introduction of this Bill. But with reference to this question of possession, he found in the explanation to section 21 of the Imperial Act that foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouseman as such, or purchased by any person for his private use and not for sale, was not considered as coming within the prohibition contained in that section, and he thought that a similar provision with some modifications should be introduced into the Bengal Act.

There was also another matter which it was desirable should be considered by the Select Committee, and that was in connection with section 15 of the Bengal Act, and related to the power of the Board to increase the quantities enumerated in that section. The quantities therein specified might be reconsidered, and lesser quantities might be specified, if such a course should be considered expedient and desirable; but he thought that on principle, and for the sake of certainty, quantities specified in that section should not be allowed to be decreased by any body except the Legislature, although the Board of Revenue might be entrusted with the power of increasing those quantities at their discretion. These were principally the matters which he believed required consideration with reference to this measure, but he thought one or two other verbal amendments were also required with reference to certain notices to be given by the Collector.

The HON. MR. REYNOLDS said in reply that he thought the question raised by the honorable members who had spoken were questions which would

naturally come under the consideration of the Select Committee, and he would therefore reserve any remarks he had to make in reference to them until the Committee had made their report. He was not aware, until he came down to the Council, that one member of the Committee was absent at present from Calcutta. He therefore wished, with the permission of the President and the Council, to add the Hon. Kristodas Pal to the Select Committee.

The motion was put and agreed to, and the Bill referred back to the Select Committee.

The Council was adjourned to Saturday the 16th instant.

Saturday, 16*th December* 1882.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding;*
The Hon. A. Phillips, *Acting Advocate-General;*
The Hon. H. J. Reynolds;
The Hon. H. L. Dampier, C.I.E.;
The Hon. C. P. L Macaulay;
Colonel the Hon. S. T. Trevor, R.E.;
The Hon. T. T. Allen;
The Hon. J. E. Caithness;
The Hon. Kristodas Pal, C.I.E.;
The Hon. Bhudeb Mookerjee, C.I.E.;
The Hon. Mahomed Yusuf; and
The Hon. Harbuns Sahai.

AMENDMENT OF THE EXCISE ACT.

The Hon. Mr. Reynolds presented the report of the Select Committee on the Bill to amend the Bengal Excise Act, 1878. He said he did not propose to take any action upon the report to-day, and begged to give notice that he would, at the next meeting, move that the report be taken into consideration in order to the settlement of the clauses of the Bill.

BENGAL MUNICIPALITIES.

The Hon. Mr. Reynolds moved for leave to introduce a Bill to amend and consolidate the law relating to Municipalities in Bengal. He said: "The Bill which I to-day ask leave to introduce is one of the two measures which you, Sir, indicated in your speech at the last meeting of the Council as the Bills which would probably occupy the greatest part of the time and attention of this Council

during the present session. It is drawn, though with very considerable modifications, on the lines of the existing Bengal Municipal Act V of 1876. It will be supplemented by the Bill for the establishment of local boards, which is in the charge of my honorable colleague to the right (Mr. Macaulay,) and these two measures taken together will, I hope and believe, supply Bengal with as complete a system of local self-government as it is in the power of the Legislature to bestow. The present Bill will deal with the cities and towns, the Local Boards Bill will provide for the villages and rural areas. But I need not remind the Council that this is a matter in which legislation can supply nothing more than the outward form: the real progress will remain to be made, and the real victory will remain to be won, outside this Council Chamber. It will rest with the people of these provinces to infuse spirit and vitality into what will otherwise be nothing more than a dead letter: to show themselves ready to make some sacrifices of their own leisure and convenience: to rise superior to prejudice and party-spirit; and to accept the power which will be placed in their hands as a trust to be administered for the benefit of all classes of the community alike. The Government is fully prepared to do its part in this work: it desires to give the most complete effect to the policy of the Government of India, and it relies with confidence on the sympathy, the loyalty, and the co-operation of the people in shaping that policy to fulfil its highest ends, and in making it fruitful in developing the national character and enhancing the national prosperity.

The Bill is not yet completely drafted, and I will defer any remarks on matters of detail till the Bill itself is in the hands of honorable members; but, with the permission of the Council, I will briefly sketch the main features of the scheme.

The present Act relates to institutions of four different kinds: Municipalities of the first class, Municipalities of the second class, unions, and stations. There are now 26 Municipalities of the first class, 98 of the second class, 52 unions, and 2 stations. These distinctions will not be retained in the Bill. There is really very little difference between the two classes of Municipalities. The classification depends on the number and density of the population; a first class Municipality must have 15,000 inhabitants, and at least 2,000 inhabitants to the square mile. But the constitution and powers of the two classes of municipalities are substantially the same. The only differences are that a first class Municipality has a somewhat larger number of Commissioners: it has a higher money limit as regards the making of contracts and the signing of orders for the payment of money; and it enjoys the right of availing itself of the provisions of Act VI of 1878, regarding the cleansing of latrines. In all other respects the two classes of Municipalities are already on the same footing; and it is not intended to make any distinction between them in the present Bill

Unions and stations are constituted, under the present law, in those towns or villages, or groups of villages, which are not of sufficient wealth or importance to be treated as Municipalities. They have hitherto been a sort of debateable ground: but the establishment of local boards will solve any difficulty which may be felt at present in dealing with places of this kind.

The more advanced unions and stations will be raised to Municipalities; and the rest will be placed under the control of the local boards.

As regards the municipal constitution, it is the intention of the Government to introduce the elective system into all important municipalities: and this intention will be shown in an unmistakeable way in the wording of the Bill. It will be provided that the system of nominating Commissioners by election by the rate-payers shall apply to all Municipalities except those which the Lieutenant-Governor may exclude from the privilege. Experience has shown that the provision in section 16 of the existing Act, which requires an application from one-third of the rate-payers before the elective system can be introduced, has had a very different effect from that which it was designed to produce. Its original object was to prevent the elective system being forced by an over-zealous Magistrate on a Municipality which did not really desire to adopt it. But its practical result has been to debar many important Municipalities from the privilege, owing to the difficulty of obtaining the necessary number of signatures. Recent enquiry has shown that the feeling in favour of the elective system is very general: and this system will accordingly be adopted as the rule, and not as the exception.

There will be no *ex-officio* Commissioners: but one-third of the total number of Commissioners will be nominated by Government. The Bill will retain the proviso of section 15 of the present Act, that not more than one-fourth of the Commissioners shall be salaried officers of Government unless such persons are elected by the rate-payers.

The next important point is that of the nomination of the Chairman, and here a distinction will be made between those Municipalities which will be authorized to elect their own Chairman, and those which may not desire, or may not be considered qualified, to exercise this power. The Bill will provide that the Lieutenant-Governor may either appoint a Chairman or may call upon the Commissioners to elect a Chairman subject to his approval. Any person so appointed or elected will become a Commissioner, will hold office for three years, and will have the right to vote upon all questions. The present provisions of the law relating to the election of Vice-Chairman will be retained, but the term of office will be extended to three years. The Commissioners will be authorized to grant salaries, if they desire to do so, to their Chairman and Vice-Chairman, and to other subordinate officers of the Municipality.

The remaining provisions of the Bill relate principally to matters of detail, and any remarks upon these may be deferred till I am in a position to lay the Bill itself before the Council. It may be said generally that the policy of the Bill is to give very large powers to the Commissioners, but that many of the sections conferring these powers will apply only to those Municipalities to which they may be extended at the request of the Commissioners themselves. Some procedure of this kind seems necessary in order to give the Bill that degree of elasticity which will adapt it to the necessities of a large number of Municipalities in very different stages of development. To meet the requirements of the more advanced towns, provisions will be introduced regarding the supply of filtered water, and the lighting of the streets with gas; but no attempt

will be made to force arrangements of this kind upon places which do not desire their introduction. As the great majority of the Municipalities will be elective, it may be anticipated with some confidence that by making the application of these sections dependent on the request of the Commissioners, we shall really be consulting the wishes, and safe-guarding the interests, of the general body of rate-payers in each Municipality.

It is unnecessary, I think, that I should dwell longer upon matters of this kind. The really important sections of the Bill are those which relate to the constitution and powers of the Municipality; and in respect of these it will be found that the Government, while reserving to itself a certain measure of control, and a certain amount of influence, has deliberately adopted the principle that the general management of municipal affairs shall be left in the hands of the people themselves and of their elected representatives."

The motion was agreed to.

AMENDMENT OF THE ESTATES PARTITION ACT.

The Hon. Mr. Dampier moved for leave to introduce a Bill to repeal section 11 of the Estates Partition Act, 1876, and to provide that no separate estate, liable for an annual amount of revenue less than ten rupees, shall be created under the provisions of this Act. He said that he felt at some disadvantage in asking the Council to turn their attention from the large and really important subjects of public development, of which his honorable friend Mr. Reynolds had just been treating, to this minute Bill, which would affect units where the other measure would bear upon thousands. The motion which stood in his name was in fact an appeal from the Executive Government to the Legislature to relieve them from a duty which had become intolerable, of which the performance was no longer required by the magnitude of the interests which it affected. For the grounds on which this statement was founded, he turned to the Board of Revenue's letter of last year, addressed to the Government. Mr. Reynolds wrote from the Board:—

"The main ground on which the Board based their opinion that there should be some restriction on butwaras is the intolerable harassment, labour, and expense which these petty butwaras impose upon the officers of Government, not only in effecting them in the first instance, but in their consequences in perpetuity. The first cost is partly met by the proprietors, although not entirely, as they pay nothing for the work of the Collectors, the Commissioner and the Board. The result, however, is a permanent increase of expenditure and work in the revenue offices without any proportionate benefit to anybody; and in order to meet this pressure additional establishments have to be entertained, which are paid for from General Revenues, or, in other words, the ryots of districts and provinces, where a partition is never heard of, have to pay for the *butwara*-loving propensities of the zemindars of Patna and Mozufferpore."

Another reason for putting a limit on minute sub-divisions was the danger to the Government revenue. Very small estates were often absorbed into others and disappeared. This he mentioned only as a make-weight, but he took his stand on the public inconvenience caused by these small partitions.

A third reason which might be urged was the economical effect of these very small sub-divisions in creating landlords who were poor and without the power of improving their estates.

Regulation VI of 1807 placed a restriction on the making of *butwaras*. It provided that no estate which paid less than a revenue of Rs. 1,000 could be divided, and that no estate could be formed by partition whose revenue was less than Rs. 500 a year. These restrictions remained in force for three years and were removed by Regulation V of 1810, of which he must read the preamble. The reason for removing the restriction was this —

"Moreover, there being reason to believe that the restriction which has been laid on the partition of small estates by Regulation VI of 1807 has been, and is, the cause of considerable injury to numbers of individual sharers in such estates, thereby inducing a sacrifice of private rights which the degree of public inconvenience arising from the minute division of landed property does not appear to be of sufficient magnitude to justify or require."

He would call particular attention to those last words. It would be observed that both in the Act which imposed a limit, and in that by which it was afterwards removed, it was acknowledged that the question of imposing a limit depended on the balance between the degree of public inconvenience caused by making minute partitions, and the private interests affected. He would endeavour to show that the public inconvenience caused had now reached a formidable magnitude, and he would also show that the importance of this right to claim *butwara* for the protection of private interests was now much less than it used to be.

In 1848 a discussion was raised by Mr. Alexander Forbes, the Collector of Purneah, as to the public inconvenience of making these *butwaras* through Government officers, and also as to the general policy of forcing coparceners into the obligation of making these partitions against their will. He remembered that gentleman used to compare it to forcing three persons to take a hand at whist, and play for large stakes, because the fourth man wanted a rubber. The then local officers were very strongly in favour of the imposition of a limit at any rate, but the Board refused, because there was no evidence before them of sub-division to an injurious extent then existing. He begged to call the attention of the Council to the fact that in this refusal the same principle was recognized; when the public inconvenience should be great enough to warrant it, then a limit might be imposed.

In 1864 matters in Tirhoot grew serious; the Collector represented that the number of these *butwaras* and their minuteness were getting beyond all reason, and a Bill was actually under the consideration of Sir George Campbell for imposing a limit of Rs. 10, when the famine caused it to be shelved.

In 1875 Mr. Dampier had the honour to lay before this Council and carry through it a Bill to amend the *butwara* procedure, and in that Bill, as first passed by this Council, a minimum of Rs. 10 was imposed as the *jamma* of any estate which should be created by *butwara*. No estate could be formed by *butwara* under that Bill whose sudder *jumma* was less than Rs. 10, unless the proprietors of such estate were prepared to redeem the land revenue by the payment of a capitalized sum equivalent to the annual revenue. The

Governor-General in Council vetoed the Bill with regard to this particular clause, but not in consequence of the limit, and not for any reason connected with the limiting of *butwaras*, but on the question of redemption of revenue. His Excellency said that it was against the accepted policy to allow redemption of revenue for estates above one rupee. The Bill was returned; and this Council modified it in this respect, and after considerable discussion the limit was fixed at one rupee; it was provided that an estate paying less than one rupee a year could not be created unless the proprietors were prepared to redeem the amount of revenue payable on it. The Council would here observe that this Act was assented to by the Governor-General in Council, and that there was no objection on the ground of a limit being imposed upon *butwaras*.

In 1879 the Board of Revenue moved again. MR. DAMPIER had stated that he would first show that the degree of public inconvenience had become of great magnitude. In the Tirhoot district in twenty years the number of estates borne on the roll had risen from 630 to beyond 1,000. In the Patna Division in twenty years they had risen from 24,000 to 46,000, and in that division 666 cases of butwara were pending, of which nearly one third would create estates with *jummas* of less than ten rupees. He thought that these figures were enough to show that the pressure on the executive was very great.

He would next endeavour to show that the right of claiming partition of lands was of much less importance now than formerly as regards the protection of private interests. When Regulation V of 1810 spoke of injury to individual sharers, and indeed up to 1859, the whole estate was at once and immediately liable to sale for any arrears of revenue which might be allowed to accrue upon it; if one of the coparceners in a joint estate defaulted, his default entailed immediate liability of the whole estate to sale. That was the state of things up to 1859. In that year, however, a great boon was given to proprietors of joint estates in enabling them to call on the Collector to keep separate accounts in respect of payments made by each separate co-sharer. The effect of that was that if any one sharer in an estate in which separate accounts had been opened fell into arrears in respect of the payment of revenue on account of his interest in the estate, the Collector did not proceed at once to summarily sell off the whole estate, but he first put up for sale the right and interest of the defaulting sharer or sharers only in the estate. In nine cases out of ten, or ninety-nine out of one hundred, this resulted in the payment of the amount which was in arrears, and there was an end of the matter; the non-defaulting sharers were in no way injured; it was only in the hundredth case, when the sale of the defaulting proprietor's interest did not cover the amount of arrears, that the Collector was obliged to proceed to the extreme measure of putting up the whole estate for sale and enforcing the right of the Government to its revenue from the whole.

Then there was another legislative measure (Act VII of 1876) which insisted on individual proprietors in joint estates defining the extent of their interests in those estates. This of course facilitated the opening of separate accounts and prevented disputes as to the quota of revenue to be paid by respective sharers.

He hoped that after these remarks the Council would have no objection to allow him to introduce the Bill.

The motion was agreed to.

CONTROL OF COOLIES IN HILL MUNICIPALITIES.

The HON. MR. MACAULAY moved for leave to introduce a Bill for the general control of coolies in Hill Municipalities. He said that the wording of the Title and of the Interpretation clause would be made general in order to admit of the future extension of the Act to any Municipality to which the Lieutenant-Governor might consider its provisions suitable, and which he might declare to be a Hill Municipality; but, as the Council would have gathered from the opening address of His Honour the President, the necessity for legislation immediately arose in Darjeeling. That some enactment was urgently required for the protection of the public was obvious to any one who had had experience of Darjeeling in recent years, and it was probably well known to all whose friends had visited the station, or who had given any attention to the complaints of travellers in the public prints; and it would therefore be unnecessary for him to trespass at any great length on the indulgence of the Council. The rapacity and insolence of the coolies, and particularly the *dandymen*, of Darjeeling, had in fact reached such a point as to form a serious menace to the popularity and prosperity of the only sanitarium in this Province. Even permanent residents experienced considerable difficulty in dealing with these men on reasonable terms; but visitors were absolutely at their mercy. The most extortionate rates were charged, and the service rendered in return was performed as a favour rather than as a duty. Expostulation regarding absence from work, idleness, or turbulent, demeanour only evoked insult, and any attempt to assert the ordinary rights of the employer resulted in the wholesale desertion of the men, who prevented others from taking their place. Since the last meeting of the Council he had received a letter on the subject from Lord Ulick Browne, the Commissioner of the Division, than whom no one took a livelier interest in all that concerned the comfort and pleasure of visitors to Darjeeling. Lord Ulick Browne wrote:—"The complaints during last season, and especially of ladies without male relatives, were worse than ever." In fact these men proceeded on the principle that the visitor's necessity was the *dandyman's* opportunity. He had himself witnessed a case in which an invalid, too ill to walk or ride, on the point of starting to take some fresh air, was informed by the *dandymen* that they declined to carry him a few hundred yards unless they were paid double the already extortionate rate paid the day before for the same service. Nor did these men make any invidious distinctions of race. He had been much impressed upon one occasion by seeing a native gentleman, who, though of spare and muscular form, was averse to pedestrian exercise, being carried round the station by five robust *dandymen*. And this was no idle exhibition of state, for the victim had complained bitterly of the various impositions to which he had been subjected. Visitors to Darjeeling declared that it would be a perfect

place, but for the rain, the leeches, and the *dandymen*. The rain obviously could not be interfered with; and we must only hope that the activity of the destructive instincts of visitors would in time make some impression on the leeches. But the *dandymen* could be at once controlled, and he trusted that the Council would consent to interfere for their regulation and the removal of a serious ground of public complaint. He proposed that the Act should follow the lines of the law for the regulation of hackney carriages and palankeens, providing for the issue of licenses and badges, for the fixing of a tariff of charges, and for the infliction of appropriate penalties for neglect or general misconduct.

The motion was agreed to.

The Council was adjourned to Saturday, the 23rd instant.

Saturday, the 23rd December 1882.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding;*
The HON. H. L. DAMPIER, C.I.E.;
The HON. H. J. REYNOLDS;
The HON. C. P. L. MACAULAY;
Colonel the HON. S. T. TREVOR, R.E.;
The HON. T. T. ALLEN;
The HON. KRISTODAS PAL, RAI BAHADOOR, C.I.E.;
The HON. J. E. CAITHNESS;
The HON. BHUDEB MOOKERJEE, C.I.E.;
The HON. MAHOMED YUSUF; and
The HON. HARBUNS SAHAI.

AMENDMENT OF THE EXCISE ACT.

THE HON. MR. REYNOLDS moved that the further report of the Select Committee on the Bill to amend the Bengal Excise Act, 1878, be taken into consideration in order to the settlement of the clauses of the Bill. He said that three of the sections to which reference was made in the report of the Select Committee were sections in regard to which amendments had been placed on the notice paper, and therefore he would reserve his remarks upon these sections until he had heard what the Hon. Mover of those amendments had to say. He would therefore only refer at present to the amendments made by the Committee in those sections mentioned in the report which were uncontested. A definition of licensed vendor or manufacturer had been inserted in order to make it clear that the words referred only to persons under the Bengal Excise Act, and not to vendors or manufacturers who might have obtained licenses from other Governments in other Provinces. Then with regard to the section giving the Government power to lay down rules for the

importation and bonding of exciseable articles manufactured in British India beyond the limits of the territory to which the Act extended, he had explained at the last meeting of the Council the reasons which made legislation necessary, and the Council would find that the section was a very simple one, and merely gave the power which the legal advisers of Government had declared to be indispensable. The Committee had also provided in sections 29 and 30 that notice of the recall or of the surrender of a license must be in writing, which seemed reasonable and proper. And the amendment in section 61 was in accordance with the Northern India Act of 1881 and the judicial decisions which had been passed to the effect that the penalty attached to unauthorized possession did not extend to such possession by any person merely as a carrier or warehouseman. The only other alterations made by the Committee were verbal amendments in sections 53 and 60 of the Act.

The motion was agreed to, and on the motion of MR. REYNOLDS, the clauses of the Bill were considered for settlement in the form recommended by the Select Committee.

The HON. KRISTODAS PAL said the first of the amendments which he had to move had reference to the definition of tari. It was taken from the Northern India Excise Act of 1881. Tari was defined to mean the sap of any kind of palm-tree. The amendment of which he had given notice was to insert after the word "tree" the words "except fresh date-juice," but since coming to the Council Chamber, it was suggested by his hon. friend opposite (Moulvie Mahomed Yusuf) that it would be better to insert the word "unfermented" before the word "sap." The definition would then run as follows:—"Tari means the unfermented sap of any kind of palm-tree." He mentioned the proposed alteration of his amendment to the Hon. Mover, who had no objection to it. BABOO KRISTODAS PAL therefore adopted it. He had explained to the Council at a previous sitting why the fresh juice of the date-tree should not be treated as an exciseable article. The fresh date-juice, on which he laid particular stress, was used as an article of food or drink, and had no intoxicating effect whatever. On this point he had since consulted a friend of his, Baboo Kanye Lall Dey, Rai Bahadoor, who was a well known chemist, and he put him certain questions to which he obtained the following replies:—

Question.	*Answer.*
1. Is fresh palm or date-juice intoxicating?	1. No.
2. When does vinous fermentation of date-juice commence after it is taken from the tree?	2. Date-juice fresh drawn from the tree, if kept in a clean earthen pot and exposed to the sun, will begin to ferment after 10 hours; if mixed with little rice or flour and similarly exposed it will begin to ferment within about two hours; the vinous fermentation will commence much quicker if date-juice is kept in an used pot?

With regard to palm-juice, his friend referred him to a paper of his own on the use of intoxicating stimulants, in which he remarked that when drunk fresh from the tree at day-break or candle-light, the juice of the palm was quite innocuous. He added—"It is a cool and refreshing drink, often recommended for its diuretic properties to those labouring under urinary diseases."

Now the question which BABOO KRISTODAS PAL submitted was whether it would be quite consistent with the policy of the Bill to tax the fresh date-juice or the fresh palm-juice when it had no intoxicating effect. As he had pointed out at a previous sitting, the object of the law was to check the consumption of intoxicating drinks and drugs, but the use of the fresh date or palm-juice was not open to that objection, and consequently he did not think it would be consistent with the acknowledged principle of the excise law to bring them under taxation. He had also then taken occasion to refer to the letter of the Government of India vetoing the Abkari Bill of the Bombay Council which proposed to tax the *mhowa* flower on precisely the same reasons that had been used for the inclusion of fresh palm and date-juice in the Bill before the Council. His Excellency the Viceroy was of opinion that, "except in the districts of Tanna and Colaba, the use of the *mhowa* flower as food is sufficient to constitute a strong objection to the policy of the proposed law."

For the same reasons BABOO KRISTODAS PAL contended that the excise law ought not to be extended to the fresh palm or date-juice. It might be urged that practically it would be difficult to make a distinction between unfermented and fermented date or palm-juice. But he observed that the Excise Department already made a distinction in the issue of licenses for the sale of unfermented date-juice and fermented tari. The form of license ran to this effect—

"Be it known to all concerned that the person abovenamed is hereby authorized by the undersigned, Collector of the abovenamed district, to sell fresh tari under the provisions of section 36, Act VII of 1878, during the months of from 6th November 1882 to 31st March 1883. This license does not authorize the holder to sell tari in its fermented state. By doing so without taking out a separate license the holder will render himself liable to the penalty prescribed by Act VII of 1878 for selling fermented liquors without a license."

It would be thus seen that the Excise Department had practically drawn a broad distinction between fermented and unfermented tari—he should not say "tari," because that was a contradiction in terms. In unfermented state the date-juice was not tari, but was known as *khajur rus*, and was used by the people as such. The distinction made in the form of the license was clear enough, and there would therefore be no practical difficulty in exempting the fresh juice from the scope of the excise law. He need hardly point out that there were many articles of food which by special preparation might be converted into spirituous liquor. He might instance rice, potatoes, sugarcane juice, and the milk of the cocoanut, which he believed was converted into liquor in Bombay. But he had never heard that such articles when used for food were brought under taxation for excise purposes: as articles of food they ought to be exempted from the operation of the excise law.

The HON. MR. REYNOLDS said he could not accept this amendment, and he thought he could show good reasons why the Council ought not to agree to it. In the first place the amendment was, he would not say, of a revolutionary, but at any rate of an unprecedented character. From the speech of the Hon. Mover, and from the paper from the British Indian Association which had been circulated to the Council, it might be thought that this was the first time it had been proposed to impose restrictions on the sale of unfermented tari or date-juice, but so far from this being the case, the fact was that the amendment was in direct contravention of the uniform current of excise legislation for the last seventy years. MR. REYNOLDS had not thought it necessary to go further back than Regulation X of 1813; but in that Regulation he found it declared that tari, whether fresh or fermented, must not be sold without a license from the Collector. Passing on to Act XXI of 1856, which was for a long time the abkaree law for Upper India, the wording there was the same as that used afterwards in the substituted Act X of 1871, which enacted that "all tari, both fresh and fermented, is included in the expression fermented liquors" In the Act of 1881, the present Excise Act for Northern India, the word "tari" was defined to mean the sap of any kind of palm-tree, and it was subjected to excise control The words of the Bombay Act V of 1878 were very wide indeed. There "toddy" was defined to mean juice drawn from a cocoanut, brab, date, or any kind of palm tree, whether in its fermented or unfermented state; and section 14 of that Act provided that no toddy should be drawn from any tree except under license from the Collector. MR. REYNOLDS thought that all this showed what had been the regular course of legislation not only in Bengal so far as it could be traced back, but also in the North-Western Provinces and in Bombay. This, therefore, was his first objection to the amendment: that it was opposed to the experience and practice of a long course of years.

Secondly, he felt obliged to object to the amendment on account of the danger to the revenue which it involved. It was true that the revenue from unfermented tari was very inconsiderable—only Rs. 23,000; but the whole excise revenue derived from tari was about 6½ lakhs of rupees, and to release unfermented tari from all excise control would very seriously endanger the receipts from the taxation of tari. The revenue from unfermented tari was mostly derived from the Dacca and Chittagong Divisions, and it was from those parts of the province that complaints had been received as to the restrictions put upon the use of unfermented tari. In those divisions there was hardly any revenue from fermented tari; but in the Patna Division, from which no complaints had been received, the receipts from fermented tari were above 4 lakhs of rupees. He could not consent to endanger this revenue by excluding unfermented tari from the operation of the law. What the Government required in the case of unfermented tari was not so much the power of taxation as the power of control, and this power MR. REYNOLDS was not prepared to surrender.

These were two arguments against the amendment, but there was a further reason still. MR. REYNOLDS thought the Hon. Mover of the amendment could not fully have considered the injury which his proposal was likely to do to a cause which no doubt the Hon. Gentlemen had much at

heart—the cause of temperance. The object of the excise policy of Government was the repression of drunkenness; and, this being so, MR. REYNOLDS did not see how the Government could possibly abandon its control over the sale, possession, and consumption of a liquor, which became, by a brief and natural process, a highly intoxicating beverage. The Hon. Member had given the Council some account of unfermented tari and of the time it took to ferment. MR. REYNOLDS had consulted the Chemical Examiner on this point, and that gentleman had informed him that chemically there was no difference between the sap of the palm and of the date; that the time they took to ferment varied according to temperature and atmospheric conditions, but that generally speaking, from six to eight hours might be taken as the average time of fermentation. MR. REYNOLDS did not think it would be consistent with the principles of excise legislation to surrender all control over a beverage which possessed such qualities. In the letter from the British Indian Association, he saw it stated that potatoes were largely used in Ireland for the illicit manufacture of rum, but that no one thought fit to make potatoes an exciseable commodity on that account. That rum was made from potatoes in Ireland would be news to most of the Council, but probably the writer of the l tter meant whisky. Anyhow, MR. REYNOLDS could not but think that the gentlemen of the British Indian Association must have a poor idea of the intelligence of that Council if they thought that a transparent fallacy of this kind could be palmed off upon it for an argument. Where was the analogy or resemblance between a substance that could be converted into spirit only by an elaborate process of distillation, and the sap of a tree which, by merely standing a few hours, without anything being done to it, became intoxicating? If it were the fact that by the operation of natural causes a basket of potatoes would turn within six hours into a gallon of whisky, there might have been some ground for the argument brought forward, but the facts being as they were, it was almost an insult to the understanding of Hon. Members to ask them to accept the two cases as parallel. He thought that, for these reasons, the Council ought not to agree to this amendment.

He wished to add that he did not see that the amendment, even if it were carried, would give any relief which could not be given under the present law. In the first place, in the memorial from the Eastern Bengal Districts, it was alleged that vexatious interference was exercised with unfermented tari, and that this operated as an obstruction to the manufacture of sugar. But section 62 excluded from the operation of the Act tari when supplied or used for the manufacture of goor or molasses: so that no alteration of the law was required in the interests of the sugar-industry. Then, section 14 went further still and allowed the local Government to suspend all the provisions of the Act relating to tari in any district in which the consumption of fermented tari was inconsiderable.

As fermented tari was very little used in those districts in which complaints had been made, this section of the Act gave the Government power to redress any grievance which might exist without the dangerous interference with the principles of excise legislation which would be involved

in accepting this amendment and releasing tari altogether from excise control.

The HON. MAHOMED YUSUF said that he supported this amendment, namely, that tari should be defined as meaning the "*fermented*" sap of any kind of palm tree, and the reasons for which he supported it were these. He submitted that this definition of "tari" was in effect the same as that which was found in the Imperial Council's Act XXII of 1881 for the North-Western Provinces; for in that Act he found that in section 3, clause (*e*), tari was first defined as meaning the sap of any kind of palm-tree. That would at first sight include unfermented as well as fermented tari, but clause (*f*) of the same section provided that "fermented liquor means malt liquor, wine, pachwai, and *fermented tari*, and in any provisions of this Act shall, if the Local Government, subject to the control of the Governor-General in Council, so directs, include any other fermented liquor, and also tari, though it may not have perceptibly begun to ferment." This was in effect the definition now proposed by the amendment, because, under the Act of 1881, what was taxed was not tari, but "fermented liquor," and until the Local Government had taken action in the matter, unfermented tari was not, by virtue of anything expressly contained in the Act, included within "fermented liquor." That being the state of the law in the North-Western Provinces, the next thing was to consider how the law had stood before the Act of 1881 was passed, whether that Act had simply declared the then existing law, or whether there was any change made in that law by the Act of 1881; and if the existing law was altered by the Act of 1881, whether this Council would not also be justified in making a similar change in the law as it stood at present for Lower Bengal. The Act which preceded Act XXII of 1881 was Act X of 1871, and in that Act it was provided by section 16 that "all the provisions relating to the sale or possession of fermented liquors apply to the sale or possession of *tari, whether in a fermented state or otherwise, and all tari, both fresh and fermented, is included in the expression 'fermented liquors.'*"

It is thus quite clear that, like the Act of the Bengal Council under consideration, the Act which preceded Act XXII of 1881 in unmistakable terms included both fresh and fermented tari in the definition of "fermented liquors." His contention was that the Act now under consideration, although it was in the same terms as the above section of Act X of 1871, should be amended as far as the question of tari was concerned, so as to make it in conformity with the Act of 1881. He thought also that the sum total of the reasons bearing on this question rather pointed to the conclusion that the Council should adopt the proposed definition, which he supported the more readily and with greater confidence, now that it was found that it was similar to that adopted for the North-Western Provinces, by which unfermented tari was excluded from the definition of "fermented liquors."

He thought that there was nothing peculiar in the law of Bengal showing why the proposed definition should not be adopted; but on the other hand, if the law of Bengal were to be compared with that of the North-Western Provinces, the circumstances would be found more clearly in favour of the amendment. The

short history of the law was this. The first Regulation on the point was Regulation XXXIV of 1793, and from that Regulation it was only necessary for him to read the preamble and one or two sections. The preamble was as follows:—

"The immoderate use of spirituous liquors and intoxicating drugs having become prevalent amongst many of the lower orders of the people, from the very inconsiderable price at which they were manufactured and sold, and the proceedings of the criminal courts having evinced that the robberies and other disorders committed in the country were in a great measure ascribable to the want of proper restrictions on the manufacture and vend of such liquors and drugs, the Governor-General in Council, with a view to prevent the perpetration of crimes, and at the same time to augment the public revenue, passed certain rules on the 6th of April 1790 and subsequent dates. Those rules are now re-enacted with modifications."

Then section 12 of that Regulation made this provision—

"A tax shall be levied on toddy at the rate of twenty-five per cent. on the amount of the rents specified on the pottahs granted by the proprietors of the toddy-trees to the pausees, or extractors of the toddy."

and section 13 provided against any attempt on behalf of the proprietors of toddy-trees to defraud the Government.

That was the beginning of the law on the subject, and the Council would be pleased to observe that there was no tax on the sale of tari, but a tax of 25 per cent. was levied on the amount of the rents specified in the pottahs granted by the proprietors of the toddy-trees. This Regulation, which was at first intended only for Bengal and Behar, was extended to Benares by Regulation XLVII of 1795; so that he found that from 1795 at least the law for Benares was the same as that for Bengal and Behar.

Then Regulation VI of 1800 was passed, and that Regulation was to have operation throughout Bengal, Behar, Orissa and Benares, and section 9 of the Regulation made the following provision:—

"The following amended form of license, after the expiration of the licenses now in force for the manufacture and vend of spirituous liquors (*including toddy or tari in its fermented state*) is to be adopted in lieu of that prescribed by section 10, Regulation XXXIV of 1793."

So that by this Regulation of 1800 it was clear that it was the fermented tari, when sold, that was the subject of taxation. He was no doubt aware that there was a provision bearing on the present question in section 11, which ran as follows:—

"The several provisions contained in this and the former Regulations respecting the sale of spirituous liquors are hereby declared applicable, with an exception to the rate of duty, to toddy or tari, viz. the juice of taur, khajur and narecal trees, *whenever the same may be sold in a fermented state or, though not in a state of fermentation, by any other person than the passees or extractors of the toddy* who pay the tax of twenty-five per cent. on the rents of the tari-trees prescribed by sections 12 and 13, Regulation XXXIV of 1793, which are still to be considered in full force."

The consequence of this Regulation was that the passees could sell unfermented tari without paying any fresh tax; and that any other person who intended to sell tari, whether in a state of fermentation or otherwise, was obliged to take out a license.

This was followed by Regulation I of 1808, which was passed exclusively for Behar and Benares, and the Council would see the reasons which led to the inclusion within its provisions of all tari, fresh or fermented. That Regulation was a Regulation "for commuting the tax at present levied on *taur*, *khajur* and *narecal* trees in the provinces of Behar and Benares to a tax on the sale of the tari, whether in a fermented or unfermented state," and the preamble of that Regulation declared that—

"Whereas section 11, Regulation VI of 1800 established rules for levying a duty on the juice of the taur. khaiur. and narecal trees *when sold in a fermented state, or when sold in an unfermented state, by any other persons than the passees or extractors* of tari; and whereas in consequence of the rapid fermentation of tari when extracted from the trees, it has been found impracticable to distinguish with precision between the sale of the liquor in a fermented and unfermented state, so as to prevent the sale of it in the former state without the regular license required to be taken out by all persons vending tari in a fermented state; and whereas great inconvenience has been experienced in respect to the police of the country, in the provinces of Behar and Benares, from the sale of tari in a fermented state by the passees or extractors not paying the license duties, *and whereas it has been ascertained that in the above provinces tari in an unfermented state is little used, and that consequently no material inconvenience can be experienced by the inhabitants from subjecting the sale of it in every state* to the payment of the license duty prescribed by section 11, Regulation VI of 1800, for the sale of tari in a fermented state."

The Council would be pleased to observe that this was the first Regulation by which fresh tari was taxed, and the Council would also be pleased to observe that the Regulation was not to have any operation in Bengal; that it was passed for Behar and Benares on the express ground that no material inconvenience would be experienced from the inclusion of fresh tari; that the inconvenience of distinguishing between fresh and fermented tari was not the only ground for the passing of this Regulation; and that notwithstanding all the inconvenience, that Regulation would not have been passed if after enquiries that were made it had not been "ascertained" that in Behar and Benares tari in an unfermented state was little used, and that consequently no material inconvenience could be experienced by the inhabitants from subjecting the sale of it in every state to the payment of license duty.

Section 2 of this Regulation enacted—

"That sections 12 and 13, Regulation XXXIV of 1793, and section 11, Regulation VI of 1800, as far as the latter section exempts the extractors of tari from the payment of a license duty on the sale of the liquor in an unfermented state, are hereby rescinded in the provinces of Behar and Benares."

and section 6 provided that the rules prescribed in sections 12 and 13, Regulation XXXIV of 1793, and in section 2, Regulation VI of 1800, should still remain in force within the provinces of Bengal and Orissa; so that he found that the law for Behar and Benares was altered by changing the definition of tari so as to include tari in an unfermented state earlier than the alteration took place in Bengal, which was some time later, as he would presently show.

Regulation I of 1808 was followed by Regulation X of 1813, by which all the previous Regulations were swept away, and tari, whether in a fermented or

unfermented state was subjected to a license by section 15. From 1808 up to 1881 in the North-Western Provinces, and from 1813 up to the present time in Bengal, the law had been the same, namely, it included fermented and fresh tari within the definition of exciseable articles. This Regulation was followed in Bengal by Act XXI of 1856, which was called the Bengal Abkari Act, and in that Act also fermented liquor included both fresh and fermented tari. Then followed Bengal Act VII of 1878, now under consideration, which adopted the previous definition and included both fresh and fermented tari. This was the legislation in Bengal. For the North-Western Provinces he found that by Act X of 1864, and Act XXVIII of 1864, the Bengal Abkari Act XXI of 1856 was extended to the provinces under the control of the Lieutenant-Governor of the Punjab. Those Acts were repealed by Act X of 1871, and by that Act tari, whether fresh or fermented, was included within the definition of "fermented liquors." This, as had already been shown was repealed by Act XXII of 1881, and so far as the law at present stood, subject to any notification by the Local Government, fresh tari was not within the definition of fermented liquor in the North-Western Provinces, and that, MOULVIE MAHOMED YUSUF submitted, was the definition this Council should adopt.

Again, the object of all legislation for the taxation of drinks which might be intoxicating in their effect on the human system was the prevention of the spread of drunkenness by making the drink more costly. It was not merely for fiscal purposes that the Excise law was to be enacted. Accordingly, the preamble to Regulation XXXIV of 1793, cited above, professed to lay down certain rules "with a view to prevent the perpetration of crimes and at the same time to augment public revenue." And section 19, Regulation VI of 1800 also purported to lay down certain rules "*with a view to check the immoderate use of spirituous liquors, including toddy in its fermented state, by enhancing the price to the consumer*, as well as to give the Magistrate a more immediate and efficient control, and to render the tax as much as possible conducive to the general purposes of the police;" but a harmless drink such as the khajur ras, which was in no way intoxicating, but which was a mere article of food, could not come within the scope or operation of the Excise law, and should not be classified with exciseable articles.

But it might be objected that to adopt this definition would be to introduce uncertainty in the law, the uncertainty arising from the easy stage of transition by which the harmless khajur ras became an intoxicating liquor; but without using other arguments against that objection, his principal answer to that objection was that, if it applied to Bengal, it also applied to the North-Western Provinces, where it was not apparently considered to be of sufficient force to prevail upon the Legislature to retain the definition of Act X of 1871.

All considerations based on uncertainty, inconvenience, and the like, must have occurred to the Supreme Council when the Act of 1881 was before them, and he had looked into the Proceedings of the Council for reasons which led

the Legislature to change the law from what it was in Act X of 1871 to the form which it took in the Act of 1881: but no reasons were expressly assigned for the alteration. He could only find that it was on the 13th April 1881 that leave was asked to introduce the Bill: that on the 20th April 1881 the Bill itself was introduced in the Council with the provision as to tari now under consideration as in the latter Act, and the report of the Select Committee, of which His Honor was a member, was presented on the 5th of October and considered on the 26th of October 1881 without any allusion to the change in the wording of the definitions of "tari" and "fermented liquors" now under consideration. The Bill was also passed on the 26th October 1881. He was therefore not in a position to state the reasons which led to the change, although he was quite sure that the matter was considered in all its bearings and from all points of view. He thought that perhaps the thing was quite obvious, and therefore it was not considered necessary to give any reason, the points being too clear to admit of any doubt. But whatever was the reason, there was the law in its present shape in the Act of 1881, and he submitted that, in that respect, the Act of the Bengal Council should be made to conform to the Imperial Act of 1881.

The Hon. Mr. Allen said: "I have only six words to say. Reference has been made in the papers circulated from the British Indian Association to potatoes in Ireland, from which we are told rum is manufactured. But the proper reference would have been to malt, from which most of the spirituous and fermented liquor in England is made, and there is no subject in regard to which the excise exercised a more rigid control than malt. As to the innocent character of fresh tari, we must suppose that, let chemists say what they may, in practice there is no such thing. I have lived in districts where the khajur ras was largely consumed, and found that whenever my servants drank it during the day, they returned muddled in the evening and with bad headaches in the morning."

The Hon. Mr. Dampier said he wished to make a few remarks directly on the speech of the Hon. Member who spoke last but one (Moulvie Mahomed Yusuf). Every one knew how dangerous a thing it was to quote an imperfect extract. In the first place he must protest against what the Hon. Member said at the end of his speech. At the beginning of his statement he read the preamble of an old Regulation, in which it was said that the object of the taxation was first to stop drunkenness, and secondly to increase the public revenue. And at the end of his speech he went back to that preamble and argued that fresh tair should not be brought under excise control because it did not create drunkenness, and because in that preamble the object of abkari legislation was said to be to put a stop to drunkenness; and here the Hon. Member omitted all mention of the secondary object mentioned in that preamble, viz. to raise revenue.

The position now taken was that, although it might be undesirable in itself to interfere with tari while actually fresh, yet that, owing to the fact of it so speedily becoming a liquor causing drunkenness, it was absolutely necessary, for the effective operation of the measures taken for checking the

consumption of spirituous liquors by taxing them, that some restrictions should be put on the possession of fresh tari, and that it should be brought under excise control.

Then MR. DAMPIER proceeded to the second point. As he understood the Hon. Member, his argument rested in a great degree on this, that the Northern India Excise Act of 1881 of the Imperial Council deliberately excluded the fresh juice from the list of articles brought under excise control, although it had been included among such articles by the previous legislation in force up to that time. The Hon. Member had said that it was true that in section 3 clause (*e*) of the Act of 1882, tari was defined to mean the sap of any kind of palm-tree, but that the very next clause (*f*) drew the teeth out of the last definition, for it provided that fermented liquor meant "malt liquor, wine, puchwai and fermented tari." This second clause (*f*) the Hon. Member said really withdrew unfermented tari from the definition in the preceding clause. The Hon. Member could scarcely wish this Council to accept the first sentence of this clause without looking at the rest of the clause. The clause ran on to say that "in any provision of this Act, if the local Government, subject to the control of the Governor-General in Council, so directs, fermented liquor shall include any other fermented liquor *and also tari*, though it may not perceptibly have begun to ferment." Therefore, the real argument to be founded on these two clauses was that in the Act of 1881 the Imperial Legislature deliberately recognised the policy of the previous Acts by which fresh tari was brought within the control of excise administration for excise purposes, and this was the direct opposite of the argument which the Hon. Member had attempted to draw from these clauses.

The HON. HURBANS SAHAI said he was of opinion that the definitions contained in clauses (*e*) and (*f*) which had been referred to should be adopted, because, as far as Behar was concerned at least, he thought the law should be the same as that for the North-Western Provinces.

The HON. MR. REYNOLDS rose to order, and pointed out that there was no such motion before the Council.

HIS HONOR THE PRESIDENT ruled that the Hon. Member was out of order in speaking of a question which was not before the Council.

The HON. HURBANS SAHAI said that in that case he would content himself by supporting the adoption of clause (*e*).

The HON. MAHOMED YUSUF remarked, in explanation of what had fallen from the Hon. Member opposite (Mr. Dampier), that he had read all the words of definition (*f*) up to the end, and he had argued that even if the Local Government did not include tari as a kind of fermented liquor, still the effect of clause (*e*), taken in connection with clause (*f*), was to include tari, whether fermented or unfermented, unless the Local Government thought proper to exclude fresh tari.

The HON. MR. DAMPIER asked whether it was or was not the gist of the Hon. Member's argument that the Act of 1881 deliberately and intentionally reversed the policy of the Legislature in bringing tari within excise control.

The HON. KRISTODAS PAL said his hon. friend opposite (Moulvie Mahomed Yusuf) had partly anticipated him in answering the legal objections which had been taken by the Hon. Mover of the Bill to this amendment, and he would not therefore again traverse the ground which his hon. friend had gone over in giving the history of legislation on the subject. He thought it was abundantly clear, from what had fallen from his hon. friend, that the primary object of legislation ninety years ago was to check the spread of the use of intoxicating drugs and drinks. The secondary object was of course revenue; but the primary object was sought to be attained by combining the fiscal and moral functions of the Government. The best way of preventing the immoderate use of intoxicating articles was to impose an excise tax on their manufacture and sale. It would be superfluous to argue this point when it had been repeatedly declared by Government that revenue was not the object of excise legislation, but the discouragement of the use of intoxicating drugs and drinks and the prevention of crime. As to the revenue part of the question, he considered it quite subsidiary to the great moral question involved in excise legislation. In commenting on the amendment, the Hon. Mover had been pleased to charge him with being revolutionary, because he had ventured to propose an amendment which was not quite in accordance with past legislation on the subject, and he called the proposal unprecedented. BABOO KRISTODAS PAL was quite willing to plead guilty to the soft impeachment. If it was revolutionary to declare that the Legislature should not tax articles of food or drink, he would not object to being called "revolutionary." He did maintain that nature had given the fresh juice and man should not tax it. In these days of progressive administration, neither the Government nor the Legislature clung to the traditions of the past. The Government now-a-days looked ahead; it was progressive; and how many measures had been of late propounded or passed which tended to shew the progressive spirit in legislation and executive administration. In that very Council at the last meeting the Hon. Mover had himself applied for leave to introduce a Bill, the object of which was to give an onward push to the political aspirations of the people, and could it be said that his hon. friend was "revolutionary," because he was made the messenger of that progressive manifesto? He proceeded in accordance with the spirit of the age, with the modern spirit of legislation and administration. and in the same spirit BABOO KRISTODAS PAL asked, if in past legislation innocent drinks were considered exciseable articles, and if on examination it was found that they were not fit subjects for excise duty, surely he, sitting in this Council, had a right to rise to the occasion and interrogate the Council whether they should follow the legislation of the past, merely because it was past legislation.

In referring to some of the Acts to which BABOO KRISTODAS PAL had adverted in moving his amendment, his hon. friend called attention to the Bombay Toddy Act, and he said that under that Act the milk of the cocoanut was included as an exciseable article. BABOO KRISTODAS PAL knew that, when the milk of the cocoanut was converted into intoxicating liquor, it was treated as an exciseable article, but he was not aware that the fresh milk of the

cocoanut was taxed in Bombay as fresh date-juice was taxed in Bengal. Then his hon. friend spoke of the serious sacrifice of revenue which would be involved by the exemption of fresh date-juice; but what was the amount of revenue derived from fresh date-juice—according to his own statement the sum of Rs. 23,000! But it was remarked that the revenue from fermented tari was 6½ lakhs, and if the fresh juice was exempted the revenue from tari would be endangered. BABOO KRISTODAS PAL did not understand by what process of reasoning his hon. friend had come to that conclusion. Probably he thought a distinction could not practically be made between fermented and unfermented tari, and therefore there would be a loss of revenue. BABOO KRISTODAS Pal had read to the Council the form of license granted for the sale of fresh date-juice, and that form made a broad distinction between the fermented and unfermented article. And if that was practically done now, why could not the same distinction be made hereafter, should the Legislature exempt fresh tari or date-juice from the scope of the excise law? Therefore the bogey of loss of revenue from fresh tari was simply chimerical. It was said that it was only in the Dacca and Chittagong Divisions that fresh date-juice was licensed for excise purposes to any large extent. But BABOO KRISTODAS PAL had heard complaints on the subject from the 24-Pergunnahs, and he might mention that criminal prosecutions were instituted in large numbers in the 24-Pergunnahs, and after a great deal of remonstrance those prosecutions were stopped; but whether such complaints were more frequent in the 24-Pergunnahs or in the Dacca and Chittagong Divisions was quite immaterial. The real point was whether it was consistent with the principles of excise legislation to tax articles of food or drink which were not intoxicating in their effects, and that was the point which he submitted for the consideration of the Council

[The HON. MR. DAMPIER remarked that the effect of the amendment would be not only to exempt fresh tari from taxation, but from excise supervision as well.]

The HON. KRISTODAS PAL continued—Supervision was exercised by the licensing system. But what supervision was necessary over articles of food or drink? Was any supervision exercised over the sale of rice because it was converted by a special preparation into rum? Why should fresh date-juice be singled out as the article which should be brought within the cognizance of the Excise Department for purposes of supervision? It might be said that it got fermented in ten or twelve hours, it then became tari, and when it became tari it was fully within the cognizance of the Excise Department; but when it was fresh and was drunk as an innocent beverage, it should not be brought within the control of the Excise Department, because it was not then an exciseable article. His hon. friend was pleased to appeal to the cause of temperance against the amendment, but BABOO KRISTODAS PAL could not perceive the force of that appeal. *Khujur rus* was innocuous, and taken in any quantity did not produce intoxication. He could not therefore understand how he sacrificed the cause of temperance by urging its exemption from the Act, and he did not think that the interests of temperance would suffer in the least degree from such exemption. Then his hon. friend said much would not be gained practically by the

amendment, because after all there were provisions in the Act which enabled the Government to exclude certain parts of the country from the operation of the law as regards tari. He would remind the Council here of an incident which took place in 1878 when the Hon. Member passed the Bill of 1878 through the Council. He found on reference to the proceedings of the Council, held on the 13th April 1878, that he had raised this very question when the clauses of the Bill were under consideration by the Council. Then, however, he did not in his proposal include the fresh date-juice, for he was not then aware that the Board of Revenue was going to include by a circular fresh date-juice under the name of tari. Therefore he had then only referred to fresh palm-juice; and the hon'ble member in charge of the Bill was pleased to say that "there was no intention to interfere vexatiously with the production and use of fresh tari."

It would thus be seen that the same answer was given in 1878 which his hon. friends now gave in 1882. But what had been the history of the action of the Excise Department in the working of the law. He had quoted on the last occasion the Board's circular which declared fresh date-juice to be included in the term tari; he had also quoted the memorial of the East Bengal Landholders' Association complaining bitterly of the hardships, injustice, and annoyance caused on this account in those districts; he had also read an extract from the report of the Board of Revenue confirming in a manner the statement that unfermented date-juice had been largely taxed in the Dacca and Chittagong Divisions. That had been practically the working of the discretion on which his hon. friend relied in 1878 in reply to the objection taken on that occasion. The other day the hon. and learned legal member of the Government of India in moving for the amendment of the rules of business urged that not only the Legislative Bills, but also the rules issued under them, should be published beforehand for general information in order to elicit public criticism, the inference being that there should be as little room for discretionary legislation as possible. Following the spirit of the remark of the hon. and learned law member he (BABOO KRISTODAS PAL) submitted that the taxation of fresh date-juice should not be left to the discretion of the Board of Revenue, but that it should be settled definitely in the Act of the Legislature. For these reasons he contended that this amendment should be passed.

HIS HONOR THE PRESIDENT said he had a few observations to offer before putting the motion to the vote. The difficulty of attempting to introduce the smallest amendments into any existing law was well exemplified by the proceedings of to-day. The Excise law of Bengal was considered so short a time back as 1878; it was a consolidating measure and brought together all past legislation into one Act. In the present Bill the original intention was limited to the addition of a single section of the law for the purpose of giving power to lay down rules for regulating the importation and bonding of liquor manufactured in any part of British India beyond the limits of the territory to which the Act extended; but in the course of the discussion of this simple object, the Bill had grown from a Bill of one section into a Bill of fifteen or twenty sections. Thus, in enlarging the scope of the Bill, the Council found themselves committed to

the discussion again of all the old questions which it was supposed had been long ago disposed of—questions of policy and principle, and amongst them the one raised to-day, whether tari in an unfermented state should or should not be exempted from taxation. Now it was certain that the decision on this point went even much further back than 1878. There were two subjects which should be considered in dealing with excise matters: the first was to check the spread of intoxication; and secondly, to secure what was in all countries a legitimate source of revenue. On both these considerations he thought the amendment was one which should be opposed. The Hon. Mover of the amendment had pressed on the Council the point which had been met by the Hon. Member in charge of the Bill, that this measure was similar to one passed by the Bombay Legislature, which had been recently vetoed by His Excellency the Viceroy, and the argument he urged was that the Council might as well tax rice or potatoes or any other article of harmless food in the same way as it was now proposed to tax unfermented tari. The answer to that was very simple. In the Bombay case the mowha was a fruit used by the people as food. It required some careful artificial process of manufacture to convert it into an intoxicating liquor, and the same might be said of rice and potatoes and other such products. But, upon the showing of the Hon. Member himself, tari could not be enumerated in the same category, for tari or date juice by a natural process in a very short period of time was transferred into a strong intoxicant, and the Council might be quite certain under the circumstances that the result of excluding unfermented tari from the excise regulations would be that all over the country the Government would not only lose its control over the improper use of the article, and thus tend to increase drunkenness, but would also lose its revenue from fermented tari, because the whole produce of the palm and date trees would be simply kept and allowed to turn into fermented liquor, and this could neither be prevented by the Excise Officer nor brought under taxation by the Collector. His Honor was ready to admit that he was not above considerations of revenue in this matter. Practically and actually as regards the consumption of unfermented tari, its exemption might involve a very small loss, but if it was once exempted on the ground proposed, the whole revenue derived from tari would be imperilled. There was naturally an impatience of taxation in the hearts of most people, and perhaps no where more so than in India. The Government was taken to task for keeping on the license-tax because it brought in no large and increasing revenue; the stamp law was objected to as arbitrary and excessive; and so with regard to excise on spirituous liquors and other kinds of taxation, the parties who were affected by them in different ways wished the taxes which affected them to be taken off. It was clear that if all effective sources of revenue were to be abandoned, administration would be impossible, especially in days when greater demands were being made upon Government for reforms and improvements of all kinds. Here, even if the proposal for exemption was made now for the first time, it could not be entertained, because it would seriously jeopardise the public revenue; but really in the present case the Council was dealing with a question which, as was shown by the

Hon. Member on the left (Moulvie Mahomed Yusuf) went so far back as 1813. Whatever the principle might have been prior to that time it was hardly possible to be certain without very minute examination, but certainly from 1813 up to this date tari in an unfermented condition had always been included within the purview of excise taxation. The Hon. Member traced the law down to 1881, when the Government of India passed the amending Act re-enacting the Excise law of the North-Western Provinces. On that he made his stand, and asked and urged the Council to adopt the definition of tari given there, which, as the Hon. Member on the right (Mr. Dampier) had shown, did really not exclude unfermented tari. It seemed to His Honor that if the Council did really wish to re-consider the question from the point of view of what was the best form of definition, that which prevailed under the last Act of the Government of India, or that which governed excise administration in Bengal passed in 1878, remembering that tari, both fresh and unfermented, had always been the subject of taxation for the last seventy years, there was really no ground for a change in the law as it at present stood in these provinces. The difference would be just this, that while the Government of India made it possible for the local Government to exclude tari in an unfermented state when it was not considered advisable to subject it to duty, the protection here given was by section 14 of the Act of 1878, which enabled the revenue authorities to suspend the operation of the law by excluding all tari where its consumption even in a fermented state was inconsiderable. The remedy for any grievous abuse was in the hands of the chief revenue officers and would be rightly exercised.

On these grounds—on the ground that it was not open to the objection which was taken to the Bombay legislation as taxing an innocent beverage, an objection which His Honor thought did not apply to tari; and on the ground that there was no just reason for going back from the policy of seventy years, and excluding unfermented tari from liability to duty—he felt bound to oppose this amendment.

The question was then put and negatived on the following division :—

Ayes 4.	*Noes* 7.
The Hon. Hurbans Sahai.	The Hon. Mr. Caithness.
The Hon. Mahomed Yusuf.	The Hon. Mr. Allen.
The Hon. Bhudeb Mookerjee.	Colonel the Hon. S. T. Trevor.
The Hon. Kristodas Pal.	The Hon. Mr. Macaulay.
	The Hon. Mr. Reynolds.
	The Hon. Mr. Dampier.
	The Hon. the President.

The Hon. Kristodas Pal moved that in section 3, paragraph 2, line 2, the words "for the manufacture of spirituous liquors" be inserted after the word "still." He said that as the Hon. Member in charge of the Bill seemed disposed to accept this amendment he need not adduce any arguments in support of it.

The Hon. Mr. Reynolds said he accepted the principle of the amendment, but he had reason to complain of some of the language which had been used in connection with the question. Any one would think, from the letter of the British Indian Association, that this was the first time it was ever proposed to make the possession of an unlicensed still an offence. If the Council would turn to section 39 of the existing law, they would see that the necessity for inserting section 3 of this amending Bill was really nothing more than a matter of drafting, and that it made no difference whatever in the law. Section 39 of Act VII of 1878 empowered excise officers to arrest persons having in their possession unlicensed stills and to seize the stills. There was, however, no provision in the Act declaring the possession of an unlicensed still illegal; and section 3 of the Bill was therefore inserted. He did not, however, object to the amendment.

The Hon. Kristodas Pal said in explanation that his object in proposing this amendment was simply to prevent any misconception which might arise. He quite agreed with the Hon. Mover that it was a mere question of drafting.

The Hon. Mahomed Yusuf said that according to the ordinary principles of the construction of Statutes this section of the Bill would be read as if the words now proposed to be inserted were already in the section, because the object of the Excise Act was to prevent unlawful dealing with exciseable articles; and the words "possession of a still" occurring in section 10A must evidently mean the possession of a still contrary to the object and intention of the Act. But inasmuch as the object of the amendment was to make that expressly clear which was so by implication, and to state clearly the intention of the law by introducing certain words in the section, he supported the amendment.

The motion was put and agreed to.

The Hon. Kristodas Pal moved that in section 4, paragraph 2, the words "imported by sea" be omitted; and also that paragraph 4 of the same section be left out. He said that this question had been raised in Select Committee in amending the Bill. It might be in the recollection of hon. members that when the Bill was re-committed, it was suggested that the law should declare specifically the quantity for the retail sale of spirituous liquors, giving power to the Board of Revenue to increase that quantity if they thought it proper. In Committee it was proposed that the quantity for the retail sale of country liquors should be reduced from twelve bottles to one bottle, retaining, however, the existing quantity for the sale of imported liquors. He considered it his duty in Committee to object to this alteration, and his reasons for doing so were, firstly, that no satisfactory reason had been given shewing why the quantity for the retail sale of country spirits should be reduced, and whether the existing rule had led to any abuse; and secondly, that by making what he could not but consider an invidious distinction between imported and country liquor, the Excise Department would practically encourage the consumption of imported liquor. As far as he understood the Hon. Mover, he intended to consult the Board of Revenue

on the subject, and he believed he adhered to the amendment after consulting the Board. BABOO KRISTODAS PAL thought it was due to the Council that when a material alteration of this kind was proposed, the reasons for it should be fully laid before it. He for one, whether in Council or in Committee, had not been made acquainted with the reasons which had led to the proposed alteration. The only reason assigned was that formerly the limit of one seer was fixed for the retail sale of country spirits. But it was not explained why the limit of one quart bottle was raised to twelve bottles in the law of 1878, and why it was now considered necessary to revert to the old limit of one seer. Perhaps it might be urged that the quantity was fixed according to the custom of the trade, that those who purchased imported liquor bought by the dozen, and those who used country spirits bought it by the bottle. That might be the reason which had led to the alteration proposed, but he submitted that if that was the reason, surely it could not have been absent from the mind of the Hon. Member who introduced the original Bill in 1873, because the Act of 1878 dated its origin from 1873. It was introduced when Sir George Campbell was Lieutenant-Governor of Bengal, and afterwards the charge of the Bill was taken over by his hon. friend on the left (Mr. Dampier). BABOO KRISTODAS PAL submitted that when the Legislature in passing the law in 1878 made a material alteration by raising the limit for the retail sale of country liquor from one to twelve bottles, they must have had good and sufficient reasons for making the alteration, and he had not heard of any new circumstances or reasons which necessitated a return to the old rule. He had referred to the custom of the trade as probably affording the reason for the change now proposed, but he submitted that that was not the invariable custom. He learned that in Calcutta, for instance, country liquor was frequently sold by the dozen like imported liquor. In the mofussil, it was true, it was largely sold by the bottle, but he was informed that in many instances, three, four, five, six, and even a dozen and two dozen bottles were purchased at a time; and, particularly when punchayets were held, large purchases were made. He believed it was also becoming the practice in many parts of the country to purchase more than one bottle for home consumption, so that it could not be strictly accurate to say that country liquor was purchased by the bottle, and therefore the proposed limitation of retail sale to one bottle. He repeated that he should like to know the reason why the Board in 1878 recommended the increase of the limit for the retail sale of country spirits from one to twelve quart bottles.

He hoped he might be permitted to say that he was an advocate of temperance, and that any measure which might conduce to the suppression of intoxication and drunkenness would have his hearty support. If the proposal had been that the maximum quantity for retail sale should be reduced all round, he would most readily and willingly give his support to it. By all means let the limit be reduced, if considered necessary in the interests of temperance; but if, as had been shewn clearly in some of the Government resolutions, country liquor was less deleterious than the imported liquor sold in mofussil shops, he held that any impediment to the consumption of country liquor in

preference to imported liquor would be most detrimental to the interests of the community. He feared that if the limit for the retail sale of country spirits was reduced, the consumption of imported liquors of the kind he had indicated would be necessarily encouraged. He did not know if he was quite right in raising the question of free trade policy in connection with the subject, but if the consumption of imported spirits was encouraged or facilitated to the prejudice of country liquor, it would be in a manner protecting the importation of the foreign article, and such a course would be opposed to the acknowledged free trade policy of the Government. He found, on referring to the Statement of objects and reasons, that one of the objects of the Bill was to meet the legal objection taken at the High Court as to the power of the Board to regulate the quantities for retail sale. But it was not urged in that statement that the quantity for the retail sale of country liquor should be reduced. Evidently the idea was an afterthought; and as he had already said, not being acquainted with the real reasons which had led to the alteration, he could only answer his hon. friend in anticipation of what he might have to say. He hoped the reasons he had adduced would satisfy the Council that no case has been made out for the alteration which had been made in the Bill.

The Hon. Mr. Allen said: "Sir, I was one of the Select Committee, and I dare to defend this *invidious distinction*. But for the previous experience I have had of the sort of objections which commend themselves to the mind of the Hon. Member who moved the amendment, I should be exceedingly surprised at his action on the present occasion. From the manner in which this amendment has been brought forward, one would suppose that the Bill before the Council is now introducing an important practical change; but this is not the case. The limit of twelve seers for sale of country spirits in the former Act is rather a theoretical limit than a practical one, as the Hon. Member in charge of the Bill will doubtless fully explain. As a fact, I believe nowhere are twelve seers of country spirits allowed to be sold retail, and the only effect of the present amendment, if accepted throughout the provinces, must be to afford increased facilities for unlicensed vend of country spirits, with a very probable increase of mofussil drunkenness. We have lately read in the vernacular press *ad nauseam* of the terrible demoralization that has attended the abolition of the sudder distillery system, because, forsooth, the various secret agencies for the surreptitious sale of country spirits have been brought to the surface and made to contribute their quota to the general revenues. I cannot for a moment suppose that the Hon. Mover of the amendment has the least desire to increase this demoralisation: on the contrary he has professed himself to be an ardent advocate of temperance. But then he has a horror of "invidious distinctions." He would probably defend himself by saying with Brutus "not that I loved sobriety less, but I loved equality more." Now I would observe that equality is not always equity. In arithmetic, if we have two different numerators, and put the same denominator under both, we shall get fractions of very different values. Let any one place a five maunds load on the back of a Bengalee coolie and on a Chinese porter, the results will be somewhat different: nature will in this case

prove pretty clearly that equality was not equity. Before, therefore, the amendment before the Council could be justified on the ground of twelve seers being the limit for retail sale of imported spirits, the mover was bound to shew that the circumstances under which imported liquor and country spirits are consumed are identical. Now I contend that there is not the slightest analogy or similarity between the two traffics. The persons by whom the trade in the two different kinds of spirits is carried on differ *toto cœlo*; the consumers are altogether different, and the circumstances under which they purchase and consume the liquor differ also. The drinking public of Bengal consist of two classes at the extreme poles of the social scale—one the so-called advanced and enlightened Baboo, who with a greater or less knowledge of the English language unfortunately too often imbibe a taste for imported liquors; on the other hand the consumers of country liquor are that unclassifiable residuum which is even beyond the pale of the indigenous vernacular schools. The gulf between the two classes is simply impassable. I have heard of Baboos—I have known Baboos—who took to champagne and ice. I have heard of those who loved brown sherry, and of numerous others who took to a variety of drinks, but I never heard of any with the least tincture of English education who came so low as country spirits. On the other hand, it is exceedingly unlikely that those who consume country spirits would take to imported liquor. In Calcutta there might perhaps be an amalgamation of the two classes, but in the mofussil those who consume country spirits will continue to do so, whether the limit of retail sale be one seer or twelve seers. The essence of the distinction between the consumers of the two classes of spirits consists in this, that those who drink country spirits drink it on the premises where it is sold, as any one can see who goes a few miles from Calcutta and pays a visit to the first sooree's shop he comes across. Country spirits are, to quote the expression of the Hon. Mover of the amendment, essentially the poor man's luxury.

On hât days one may see a dozen or twenty peasants, *palki* bearers, dhobees, or such like in front of the sooree's shop in a circle, each man sitting on his heels in what may be called the national attitude. The sooree goes round with an earthen kulsi of liquor under his left arm, a two or three chittack measure in his right hand, and as he passes round he pours down the throat of each of his customers the small measure full of spirits. Will the Hon. Member pretend to say that it would be right to allow that spirit vendor to pour down those innocent throats *twelve seers of country spirits?* On a recent occasion, when a somewhat similar question was before the House of Commons, an Hon. Member laid it down as an indisputable principle that every man has a natural right to as much liquor as he can carry—and more. I accept the criterion. Judged by it, our Bill infringes no natural right. The Hon. Mover of the amendment will himself admit that one seer of country spirits is as much as any of his clients can carry—and more. The inference under such circumstances necessarily arises that the rules provided for the retail sale of country spirits should be such as are laid down for a sale under a license to drink on the premises, and must be different from those which would be

applicable to such places as the Great Eastern Hotel, Bissonath Law and Company, and similar places for the sale of imported liquors. To say that an invidious distinction has been made because different rules are provided for a totally different state of circumstances argues, I venture to submit, a very warped judgment. It has been said that in reading a man finds in a book exactly what his mind brings to its perusal, and probably the same is true of a Bill.

The invidious distinction which the Hon. Mover of the amendment finds in the rules laid down in this Bill therefore is only the objective presentiment of the invidious distinction which already exists subjectively in his own mind. Having passed through its focus, the external image is necessarily an inverted reproduction of the original. I trust, Sir, the Council will lend no countenance to this morbid sensitiveness, this perverted ingenuity—the curse of Young Bengal, whose main support is derived from the perpetual discovering of "invidious distinction."

The Hon'ble Mahomed Yusuf said that in this instance he was unable to support the amendment, although his reasons were not exactly the same with those which had just been given to the Council. He based his opinion on what had passed in the Select Committee, of which he was a member. It was true that no allusion was made in the statement of objects and reasons accompanying the Bill to the point now under consideration. But that was for obvious reasons, for this point was mooted for consideration subsequently. After the Bill had been referred to the Select Committee, a question was raised whether the power which the Board of Revenue possessed under section 15 of the Act of increasing and decreasing the quantities specified under that section should be continued in the same form in which it stood under the section. He had suggested to the Select Committee that the Board should only have the power of increasing the quantities, because otherwise great uncertainty would prevail; whereas if the power given to the Board were only one-sided, that is to say, if the Board were only to be entrusted with the power of increasing certain quantities specified in the Act, the public would have something in the Act by which they could guide themselves. He took an instance and supposed that if four seers of tari were specified in the section and the Board desired to raise the quantity under the power reserved to them from four to six seers, a person who was in possession of only four seers was sure against a criminal prosecution in consequence of the provisions of the Act itself; but if he were to have five seers of tari in his possession, he would still be protected by the rules of the Board, although he had gone beyond the quantity specified in the Act. And thus there would be no criminal prosecution until the limit of six seers was exceeded.

Therefore, in order to be on the safe side, a person had only to limit himself to the quantity specified in the Act, and he was more than sure against a criminal prosecution, which he could not be if the Board possessed the double-sided power of both increasing and decreasing the quantities specified in the section. By his suggestion, therefore, the result was that if a person conformed to the law he was safe. But by the language of the law as it stood,

a person was not sure even if he conformed to the law. The suggestion had therefore been adopted by the Select Committee.

But at the same time he had thought it proper in the Select Committee that the quantity specified in the section should be revised, and he was of that opinion because the different laws on this subject all specified lesser quantities than that which was stated in the Bengal Excise Act. In the Imperial Council's Act of 1881, the quantities specified were for foreign fermented liquors 12 bottles, and for country spirits one seer. It appeared to him that the quantities specified in the Bengal Excise Act might as well be altered and revised as proposed by the Hon. Mover of the Bill.

The HON. MR. MACAULAY said that he was not aware, till he entered the Council Chamber, that it was intended that the discussion on the amendments on the paper should proceed that day. He was under the impression that it would be postponed on technical grounds until the next meeting of the Council. Any difficulty, however, which he might thus experience was removed by the copiousness of the opportunities for reply which the speech of his hon. friend, the mover of the amendment, had afforded, by the number of the false issues he had raised and the number of the irrelevant considerations to which he had appealed. His hon friend had fallen into a remarkable series of errors—errors of fact and errors of principle. The former had been chiefly exhibited in his treatment of the history of the question. He had discovered an inconsistency between the action of the Legislature in 1878 and the action which it was proposed to take now, because the law of 1878 fixed the retail limit for country spirits at 12 quart bottles, whereas it was now proposed to fix it at one seer. But in truth there was no inconsistency at all; for the simple reason that the limit fixed in 1878 was intended as a maximum, while the limit now proposed was intended as a minimum. The limit fixed in the Act of 1878 was in fact never reached. Before that Act was passed, the retail rate was everywhere one seer. As soon as the Act was passed the Board of Revenue, under their order of 6th April 1878, raised it in most districts to six quart bottles, but in certain districts or parts of districts, chiefly on the frontier, the old limit of one seer was maintained because it was considered necessary. There was certainly no competition in these districts between country and imported spirits. He found from the returns that there was only one retail license for the sale of imported liquors in Pooree, four in Julpigoree, two in Mozufferpore, four in Durbhunga, four in Chumparun and so on. He had not heard any attempt to shew that this limit was other than a proper one for the districts in which it was in force. But there was high legal authority for thinking that the rule under which it was maintained was not in accordance with the law as strictly interpreted. The obvious course therefore was to fix it as the minimum, leaving the Board to raise it where this course might be desirable. The limit being permissive, the Board would certainly not introduce it where it had hitherto been found unsuitable, and accordingly the picture of repression which the Hon. Member had drawn was one which would exist only in his own imagination and in the archives of this Council. The position would remain precisely as it was at present. The answer, therefore, to this

part of the Hon. Gentleman's argument was, first, that we must lay down some minimum if we wished to act legally; second, that one seer had been found to be the proper limit for certain districts, and must therefore be taken as the minimum; third, that the existing limits would not be interfered with in these districts or in any other district. The Hon. Gentleman had also made several mistakes of principle, of which one had been fully disposed of by his hon. friend Mr. Allen. It was impossible to pretend to make uniform rules for liquors which differed in the customs of trade, in the habits of consumers, in the conditions of manufacture, of custody, of sale, of transport; in fact in practically every characteristic except the single common property of intoxicating effect. He need say nothing further on this point. There was, however, another error of his hon. friend which seemed to him very remarkable. They had been told that unless the retail limit was reduced for imported liquors there would be an invidious distinction in their favour, that they would be protected, and that a premium would be held out to them. He had never before heard that we protected an article, and held out a premium to it, by taxing it. The whole argument of his hon. friend on this point rested upon the theory that articles can be purchased more cheaply by retail than by wholesale. His hon. friend assumed that if the limit of 12 quart bottles for imported liquors were reduced the price would be increased. He here missed the *rationale* of the difference between retail licenses and wholesale licenses. The wholesale vendor was supposed to sell only to vendors, who would again sell to consumers. As a matter of fact it would be impossible to fix any limit which would secure that every wholesale license covered only wholesale transactions, and every retail purchase was covered by a retail license. Individuals would purchase large quantities for their personal consumption, but if we endeavoured to raise the retail limit so as to include them, we should be compelling wholesale vendors to take out retail licenses to cover still more numerous genuine wholesale transactions. The Hon. Gentleman had overlooked the simple fact that all liquor purchased by retail pays two licenses, and is consequently more costly than liquor purchased by wholesale The effect therefore of reducing the limit for European liquors from 12 quart bottles to say 6, would be to make all liquor purchased in quantities varying from 7 to 12 quart bottles cheaper than it now was. In fact, if we did not go so low as to harass retail vendors, so as to compel them to take out wholesale licenses as well, the nearer we went to general wholesale the cheaper we should make the liquor. The proposal of the Hon. Member would have precisely the opposite effect to that which he contemplated. His whole argument in support of the amendment appeared to rest on no ground of fact, principle or economy.

The Hon. Mr. Dampier said the Hon. Mover of the amendment made some remarks to which he should, as a Member of the Board of Revenue and particularly with reference to the personal allusion to himself as connected with the passing of the former Bill, be expected to give an answer. The Hon. Member wished to know why in the last Act the maximum quantity for the retail sale of country spirits was altered. Mr. Dampier had no recollection

himself of having taken a part in any of the discussions on that point, and having just looked through the proceedings of the Council, he found that in 1878 he took charge of the Bill, after it had been reported upon by the Select Committee, with the view of carrying it formally through the Council, except in regard to two points; one of them being on the question of the inspection of druggists' shops, and the other prohibiting the institution of suits in the Small Cause Court for liquor drank in hotels on the model of the English "Tippling Act" He did not take part in any other question in connection with the passing of the Excise Act of 1878, and he was, therefore, not able to give any answer to the question why the maximum retail quantity of country liquor was altered.

The HON. MR. REYNOLDS said he thought sufficient reasons for this section had been given in the report of the Select Committee, and in the speech of the Hon. Member opposite (Mr. Macaulay), but he might perhaps be allowed to add a few remarks on the subject. The effect of the amendment would be to raise the limit both of country spirits and of imported liquors equally to twelve seers, that being the minimum quantity from which no reduction would be allowed. The Hon. Member opposite (Mr. Macaulay) had explained the practical reasons which existed against the amendment, because the limit of one seer was and still continued the limit in several districts as regards country spirits. When the Bill in its original form came before the Select Committee, MR. REYNOLDS understood, and he believed all the Members of the Select Committee understood, that the principle that the Board should have power only in the direction of raising the limit had been definitely accepted. If that principle was accepted there was no doubt that the quantity specified in the section must be the minimum quantity practically in use. He found on consulting the Board of Revenue that the quantity of one seer was actually the limit in certain districts, and that there were practical reasons why that limit should not be raised. That was the reason why the Bill reduced the quantity of country spirits from two gallons to one seer. But then it was said, why not reduce the limit for the sale of imported liquors to the same minimum? The simple reason was that, for imported liquors, there was no object in making any change. The quantity of two gallons had always been the rule, and there was no reason for altering it. As for what was said to be the invidious distinction made between one kind of liquor and another, it was not as if this principle was new to legislation The Northern India Excise Act of 1881, which had been held up as a model to the Council, as did the previous Act of 1871, made the same distinction. So that the change was not proposed to be made by the Bill, but by the amendment of his hon. friend, and MR. REYNOLDS must decidedly object to it.

The HON. KRISTODAS PAL said in reply that he thanked the Hon. Members who had spoken for vouchsafing to him some of the information which he had asked for, but he must confess that he had not yet received full information. The Hon. Member on the left (Mr. Dampier) had explained why he was unable to give the Council the reasons which led the Legislature to raise the old limit of one seer to twelve quart bottles by the Act of 1878.

[The HON. MR. MACAULAY explained that the limit given in the Act was a maximum; the intention was to give the Board power to reduce the limit as circumstances required.]

The HON. KRISTODAS PAL continued—Whatever the intention was it was not expressed in the Act, and according to a well known legal maxim the intention of the Legislature could only be gathered from the context of the law; and here the law was very clear that the limit for the retail sale of country spirits was fixed at twelve seers. But he would not quarrel about this point. He had already said that the non-official members of the Council would be exceedingly obliged if, when Bills were laid before the Council, they were put in possession of all the information which might help them in studying those Bills. Up to this moment they did not know the reasons which had rendered the alteration of the law necessary, for if he had known the reasons he might not have put forward the amendment, or urged it in the way he had done.

With reference to what fell from the Hon. Member opposite (Mr. Allen), he had been pleased to read him a homily for which BABOO KRISTODAS PAL felt thankful to him. His hon. friend said that equality was not always equity, and that imported and country spirits could not always be placed on the same footing. BABOO KRISTODAS PAL fully admitted that the consumption of imported and country liquor by the natives of the country would have different effects, and it was because he was inclined to think that the provision in this Bill might tend to encourage the consumption of imported liquor, which he considered would be more injurious than the use of country liquor, that he was of opinion that factitious encouragement should not be offered to the former. His hon. friend described at some length the circumstances which led to different action on this question. He took the enlightened "Baboo" as he called the educated native, at one end of the social ladder, and the rustic cultivator at the other end, and said that the enlightened Baboo drank imported spirits and the rustic labourer imbibed country liquor. BABOO KRISTODAS PAL could not say how far his friend's experience extended, but as a native of the country, he could say that his countrymen in the mofussil did not very largely consume imported spirits. In Calcutta it might be different; but he was told only the other day by no less than five Deputy Collectors that the consumption of country liquor was extending among educated and wealthy natives in the mofussil.

Nothing could be more disastrous to the health and morals of the people than the spread of a taste for deleterious imported liquor, particularly among the rural population. He was disposed to think that the use of country liquor was much less harmful than that of imported spirits; but he was not prepared to admit that the enlightened "Baboos" in the mofussil consumed only imported spirits. And if they did, what did the argument lead to? It meant that the Council should encourage the consumption of the more harmful article by lowering the retail sale of the less harmful!

He was of opinion that the Government should discourage as much as possible the consumption of intoxicating spirits by the people of this country,

but if a line was to be drawn, it ought to be drawn in favour of that which was less injurious. Some of their greatest and wealthiest men had died victims to drink craving, and the manifest duty of Government was therefore to discourage it as much as possible.

Then he was told that the custom amongst the people here was to drink on the premises or in the shop, and therefore the limit of one bottle would not be inconvenient to them. But he rather believed that if one man drank at the premises of the vendor, 10 or 20 drank at home; therefore he did not think that the custom alluded to ought to govern the lowering of the quantity for retail sale. His hon. friend had presented to them a glowing picture of 20 or 30 rustic people gathered together on the premises of a liquor vendor, who went round with a pot of liquor in his hands pouring country liquor down the throats of those innocent men, and asked the Council to imagine what would be the result if the limit for retail sale was raised to twelve bottles. But BABOO KRISTODAS PAL would ask whether the mischievous effects which his hon. friend depicted would be lessened or decreased if the liquor vendor were to pour deleterious imported spirits down the throats of these innocent men?

He raised the question between imported and country spirits not from "morbid sensitiveness" or "perverted ingenuity," but from a desire to discourage as much as possible the consumption of imported liquor which he considered was more injurious than otherwise. He alluded to the bad and nasty Radha Bazar stuff, which was sold in native shops under the name of imported spirits—not what European gentlemen generally drank.

Then his hon. friend on the other side (Mr. Macaulay) had made a very important revelation. He said that the statement of facts and the enunciation of principle made by BABOO KRISTODAS PAL were equally wrong, and in correcting his mistake the hon. gentleman said that the limit of twelve bottles laid down in 1878 was in practice never observed; that it was six seers in Dacca and other places, and one seer in others; and that the Board had fixed the limit with reference to the circumstances of each place. So legislation was one thing and executive action another. There was also another argument put forward by the Hon. Member which BABOO KRISTODAS PAL did not clearly understand. Did he mean that the minimum limit would not materially affect the consumption of country liquor, because the retail vendor generally held two licenses, that was to say, one for retail sale and another for wholesale? As far as BABOO KRISTODAS PAL was aware that was not the fact. As for the economic argument advanced by the Hon. Gentlemen, viz. that the distinction made in the retail sale of imported and country liquor would not be attended with protectionism, BABOO KRISTODAS PAL could only say that he did not appreciate the force of this argument. He thought it was obvious that if there were two similar articles for sale, and if the tariff encouraged the sale of the one to the prejudice of the other, the result would necessarily be the protection of the favoured article.

Holding this view, he thought it was undesirable that any distinction should be made between the sale of country and imported spirits.

The amendment was then put to the vote and negatived on the following division:—

Ayes 2.	*Noes* 9.
The Hon. Bhudeb Mookerjee.	The Hon. Harbuns Sahai.
The Hon. Kristodas Pal.	The Hon. Mahomed Yusuf.
	The Hon. Mr. Caithness.
	The Hon. Mr. Allen.
	Colonel the Hon. S. T. Trevor.
	The Hon. Mr. Macaulay.
	The Hon. Mr. Reynolds.
	The Hon. Mr. Dampier.
	The Hon. the President.

ROAD TRAMWAYS.

COLONEL THE HON. S. T. TREVOR, in moving for leave to introduce a Bill to authorize the making, and to regulate the working of, tramways in Bengal, said:—

"Sir,—I rise to move for leave to bring in a Bill to authorize the making and to regulate the working of road tramways in Bengal. It is fortunate for me, Sir, that in the speech with which you opened this session of the Council you explained so fully the circumstances which had led to the necessity for introducing this Bill; otherwise, in my inexperience of the legislative work of this Council, I should have felt—as indeed I still feel—great anxiety and diffidence as to my ability to be an adequate exponent of the measure. The way has now, however, been so far cleared before me that this Council has already been made aware of the reasons which render legislation on this subject necessary, and in the few supplementary remarks I have to make, I need only tresspass on the patience of Hon. Members at very short length.

The only Act on the subject of tramways in force in Bengal is Act I of 1880 of this Council. It applies only to Calcutta and its suburbs, and under its operation this city has been provided with the net-work of tramways with which Hon. Members are all familiar. I fear I shall be not far wrong in saying that one effect of that familiarity has been to implant in the minds of many people, and, perhaps, even of some Hon. Members here present, a lurking belief that the tramways are not altogether an unmixed good. For my own part I must confess that whenever I have had occasion—and that not seldom—to look somewhat ruefully at the havoc played with the wheels and tyres of my carriage, I have felt disposed to bless tramways with only a very faint blessing. But these are sublunary considerations which I trust Hon. Members will banish from their minds in considering the Bill which I am asking leave to introduce. Everything has another side, and it will be my endeavour, to the best of my ability, to present the other side of the tramway question to your consideration.

The first and, perhaps, the most important feature of that other side is the financial success which so generally attends well-managed schemes of

tramway. Indeed, I believe the best antidote to the grievance I have just alluded to about damaged wheels and tyres would be the possession of some shares in the Tramway Company which might happen to be the cause of offence. At least I judge so from my experience on what used to be called the Darjeeling Tramway. If ever you saw any passenger cheerfully or stoically enduring all the incidental discomforts of a ride on that tram, while every one else was giving vent to the fiercest grumbling, you might be sure he was a shareholder whose equanimity was due to the recollection of the premium at which his shares were quoted.

The published report of the Calcutta Tramways Company for 1881, which I have here, shows that the dividends of that year were an average of 7½ per cent., and I believe I am justified in saying that the current year's working promises to show not less favourable results. And this is only the second year of working. Moreover the tramway is entirely a private enterprise, without any guarantee or subsidy from Government; not only so, but it pays a rent to the Corporation of Rs. 2,000 to Rs. 3,000 per mile per annum for the use of the roadway occupied by it.

Another feature of the tramway is the boon that it is to the poorer classes of the community. In 1881, the first year of working, when the lines were only partially completed, the number of passengers carried was 3,267,559. In the present or second year of working, the number of passengers has increased to 5,911,874, or very nearly six millions, and the receipts from these amounted to about 1½ lakhs of rupees. The number of passengers next year, estimated by the traffic of the present time, will be 6¾ millions. The average distance a passenger is carried is 1¼ mile, and the average fare received from each passenger is five pice, of which, roughly speaking, about four pice covers the gross expenditure of the tramway, and one pice remains as net profit. Hon. Members have no doubt occasionally had their attention drawn to that remarkable vehicle, a third class *ticca* gharry. The authorized fare payable for the use of one is three annas for the first mile and two annas for each succeeding mile. Therefore, if four people club together to charter one, as they often do, each of them would have to pay five pice, or the same fare for which he could perform a similar journey in a tram-car. I have never undergone the experience of a joint-stock journey of this sort in a third class *ticca*, but I have no hesitation in saying that I would go in a tram-car by preference if I had the choice.

Not only is the tramway appreciated as a boon by natives, but it is largely patronized also by Europeans; and experience has proved one rather interesting fact, which is that Europeans show as much disinclination to waste a pice as natives do. When the tramway was first started, the seats were arranged in two classes, those in front being made more comfortable with cushions, and charged at a higher rate. Soon, however, it was found that very few people patronised these first class seats, and that Europeans as well as natives all went to the second class. The result was an inconvenient one, for the tram-cars had to run too heavy behind and too light in front, and the experiment was abandoned. Now there is only one class.

If, then, the establishment of tramways is appreciated as a boon by natives and the poorer classes generally, and if it is found that they can be constructed and worked as profitably here, in India, as in other parts of the world, it will also be found that India, with its huge populations, affords a large field for their development. That development will, I believe, take the form not only of a multiplication of projects, but also of an adaptation of the mechanical nature of this means of conveyance to the peculiar circumstances and wants of this country. In Calcutta the tramway is contrived after European models, but already, I think, we can see differences which not only the climate, but the habits of the natives of this country render inevitable. If this is the case in Calcutta, where the community, the streets, the character of the traffic, are all in a great measure Europeanised, and where there is a public opinion always ready to criticise faults, how much greater will be the departure from preconceived models when tramways are constructed in towns or rural tracts in the mofussil, where roads may be narrow and unmetalled, and where public opinion is not wont to express itself very frequently or forcibly.

Where money is to be made, and where the wants of the poorer classes of the native community are recognized and appreciated, we may be sure that schemes will be set afloat by native speculators to supply those wants in their own humbler fashion, but still in imitation of the more substantial European prototypes. We may already see on the Hooghly many little steamers plying with their decks covered with seething crowds of native passengers, and managed in a primitive fashion that would be pronounced to be absolutely and hopelessly impossible by the Captain of a Peninsular and Oriental or British India Steamer. Yet these things pay, and no doubt give great satisfaction to the classes who patronise them. So it requires no prophetic vision to foresee that, as time goes on, we may have combinations started wherever there is a prospect of profit, for the establishment of cheap communications by means of inexpensive tramways adapted to the wants of the people of this country. No one can tell how different they may be from our present ideas of what a workmanlike and well-managed tramway should be. For all I can tell, there may be as much difference between a London or a Calcutta tramcar and the future tram-car of indigenous development, as there is between a Pickford's van and a bullock gharry, or between a London omnibus and a third class *bicca*. Of course, speaking as an Engineer, I may say that true economy and success are inseparable from solidity of construction and efficiency of management as we conceive them to be. The process of evolution with us, therefore, is always in the direction of additional strength and solidity. But there is nothing more absolutely certain than that there are ways of managing and doing things in India very different from any that are dreamed of in our philosophy.

I trust Hon. Members will not imagine from the remarks I have made that a new era is to be at once opened in the matter of cheap communication by anything that is contained in the Bill which I am asking leave to introduce. That Bill is merely intended to convey legal powers to Municipalities and other local authorities to promote the construction and working of tramways in their

respective jurisdictions. All I wish to indicate by my remarks is, that there may be many ways in which the powers thus granted may hereafter fructify; and that it is advisable to bear this in mind in framing the wording of the Act, so as not to limit its applicability too closely to any particular form of tramway that has hitherto been present to our minds.

I need not detain the Council by describing the structure or provisions of the Bill in detail, as that will be better done when the Bill is in the hands of Hon. Members.

I now beg to move for leave to introduce the Bill.

The motion was put and agreed to.

The Council was adjourned to Saturday the 6th January 1883.

Reg. No. 15.0 G—200—12-7-83

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